

**COMMERCE, JUSTICE, SCIENCE, AND RE-
LATED AGENCIES APPROPRIATIONS FOR
FISCAL YEAR 2013**

THURSDAY, MARCH 8, 2012

U.S. SENATE,
SUBCOMMITTEE OF THE COMMITTEE ON APPROPRIATIONS,
Washington, DC.

The subcommittee met at 10:01 a.m., in room SD-124, Dirksen Senate Office Building, Hon. Barbara Mikulski (chairman) presiding.

Present: Senators Mikulski, Leahy, Feinstein, Lautenberg, Pryor, Brown, Hutchison, Shelby, Alexander, Murkowski, and Graham.

DEPARTMENT OF JUSTICE

OFFICE OF THE ATTORNEY GENERAL

STATEMENT OF HON. ERIC H. HOLDER, JR., ATTORNEY GENERAL

OPENING STATEMENT OF SENATOR BARBARA A. MIKULSKI

Senator MIKULSKI. Good morning, everybody. The Commerce, Justice, Science, and Related Agencies Appropriations Subcommittee (CJS) will come to order. This morning, we welcome the Attorney General of the United States, and as is the usual and customary way, Senator Hutchison and I will make opening statements. We'll go to you, Mr. Attorney General, for yours, and you may summarize. With unanimous consent, all statements will be included in the record.

Senator Shelby, our colleague and former ranking member on this subcommittee, has a banking hearing. With Senator Hutchison's concurrence, we'll go right to Senator Shelby for the first question.

Senator HUTCHISON. Okay.

Senator MIKULSKI. Does that sound okay?

Senator SHELBY. Thank you.

Senator MIKULSKI. And then we will observe Senators in their order of arrival, and we expect robust participation. We're going to strictly adhere to the 5-minute rule.

So, having laid the groundwork, I just want to say good morning and welcome to our first CJS subcommittee hearing, the Attorney General of the United States, in which we will hear his presentation on the Department of Justice (DOJ) budget.

We have a very positive relationship with the Attorney General. He's brought to the Justice Department the experience of a career

prosecutor. He's been dedicated to fighting violent crime and terrorism. He knows that he is pioneering work now, working with our administration, on how to deal with the new and emerging threat of cybersecurity, which is, how do we protect our citizens, and his views and recommendations on protecting our civil liberties.

Well, Mr. Attorney General, before we get into the numbers and the money, I would just like to thank you, and in thanking you, I want to thank all the hardworking men and women who do work at DOJ. There are 116,000 employees who work there; 25,000 are Federal agents, and people work at the Federal Bureau of Investigation (FBI), Drug Enforcement Administration (DEA), the U.S. Marshals Service (USMS), and the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF). We have 20,000 prison guards and correctional staff, and 10,000 prosecutors and investigators. They've had some amazing accomplishments, which I'll talk about when I get to my question period.

But we want to thank them, because every day and every way, they stand sentry, either to do prevention and intervention, to make sure they are out on the street, doing traditional violent crime work, to really being all over the world, and then fighting issues related to white collar crime.

As the chair of the CJS Subcommittee, I have three priorities when examining the budget: communities security, how does the budget support the mission of keeping our communities safe; national security, what resources are needed to keep America safe; and then, oversight and accountability. No boondoggles on the watch of this subcommittee. And I want to make sure the Justice Department has what it needs to do its mission.

As I looked at the President's budget, I noted that there was only one new initiative, and that's the expansion of mortgage and financial fraud. That request is \$611 million. It is a modest \$5 million targeted increase, and we are going to want to hear more about that. Because we, in our own State of Maryland, have seen such a rising number of scams, and schemes, and predatory lending practices, and we need to know what you want to do with the money.

We can't have a strong, economically vibrant community unless they're safe, whether it's in our neighborhoods, whether it's protecting small business on Main Street. So, I want to know how the budget will keep America safe at home on Main Street.

The request for \$2 billion for grants to State and local law enforcement, I wonder if it's sufficient. This is \$32 million less than the 2012, and we might have to consider, you know, reorganizing priorities. The State and local funding seems to have borne the brunt of budget cuts. Since 2010, grants have been cut by \$1 billion in local funding. Now, part of this was the axe and acts of the Congress itself.

Many of my colleagues don't realize that cuts have consequences in discretionary spending. So, we need to hear your view on what we can do. We know the Government Accountability Office (GAO) has recommended that you should conduct a review and eliminate unnecessary duplication. We support that.

We also want to work in community security at the protecting of our children. One of the areas of bipartisan support is in the money to catch predators who use the Internet to stalk children, break up children's pornography rings, and track down and arrest these child molesters. We understand you are requesting \$328 million, and we'll look forward to seeing how you will allocate that, and what to do.

The Southwest Border—my colleague, Senator Hutchison, has worked assiduously in that area. I want to know that this is not only bipartisan support—we think it ought to be nonpartisan to support our border, and I'll let her raise those questions in there.

In the area of cyberthreats, our Nation faces a growing and pervasive threat overseas, from hackers, cyberspies, and cyberterrorists. We need safe and resilient networks. We worry about online banking and commerce, the safety of our power grids, air traffic control systems, digitized records.

Yesterday, with the administration, the Senate held a cyber exercise. The majority of the Senators were there to listen to an exercise on an attack on a major city's power grid. It was chilling. It was terrifying to know what happened there, and what we could do to protect it. So, we need to know about cyber.

PREPARED STATEMENT

Finally, I want to know how the Justice Department is improving its accountability to taxpayers. You know, you've gotten a bad rap—some of them, about lavish banquets, cost overruns, the Inspector General doing its audits—and it should. So, we want to know how we stand sentry over the money we do spend.

We have very specific questions, but with the number of people here, I'm shortening my statement.

[The statement follows:]

PREPARED STATEMENT OF SENATOR BARBARA A. MIKULSKI

Good morning and welcome to our first Commerce, Justice, Science, and Related Agencies (CJS) Subcommittee hearing. We begin our examination of the President's fiscal year 2013 budget by welcoming Attorney General Eric H. Holder, Jr.

Today, we'll discuss how the Justice Department's fiscal year 2013 budget request strengthens national security and counter terrorism; protects the safety, security, and rights of U.S. citizens; and ensures taxpayer dollars are used wisely.

We have a very positive relationship with Attorney General Holder. He has brought to the Justice Department the experience of a career prosecutor dedicated to protecting the American people from terrorism and violent crime. Welcome back, Attorney General Holder, and thank you for joining us today.

I want to begin today's hearing by thanking all of the hardworking men and women of the Justice Department's 119,000 civil servants:

- the 25,000 Federal agents of the Federal Bureau of investigation (FBI);
- Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF);
- the Drug Enforcement Agency (DEA);
- the U.S. Marshals Service (USMS)—and the people who support those agents;
- the 20,000 prison guards and correctional staff; and
- the 10,000 prosecutors, investigators, and legal experts.

They've had some amazing accomplishments during the last year. USMS arrested more than 12,000 fugitive sex offenders. DEA agents put more than 3,000 drug traffickers out of business. FBI dismantled 366 criminal enterprises involved in white collar crimes. U.S. Attorneys collected \$6.5 billion in criminal and civil penalties.

They are the guardians of our justice system, but they are often overlooked and undervalued. I want them to know that the CJS Subcommittee knows and appreciates what they do every day.

The President's fiscal year 2013 budget request for the Department of Justice (DOJ) totals \$27.1 billion, which is \$110 million less than the fiscal year 2012 level. The budget request also includes \$368 million in cuts to prior year funding for core Federal law enforcement functions and grants. This year's budget also relies more heavily than ever on payments into the Crime Victims Fund, which will finance 30 percent of the Department's operating budget in fiscal year 2013. The request reflects the stringent reality of our times.

As chairwoman of the CJS Subcommittee, I have three priorities when examining the budget for the Justice Department. The first is community security. How does the budget support the mission of keeping our communities safe? The second is national security. What resources are needed to keep America safe from terrorism? And finally, oversight and accountability. Are tax dollars being spent wisely?

I want to make sure that the DOJ has what it needs to uphold the rule of law and to protect this country from predatory attacks.

There is only one new initiative in the Department's budget request this year—an expansion of mortgage and financial fraud task forces. Our economy depends on the integrity of our financial markets. Our neighborhoods and communities have been rattled by mortgage fraud schemes and scams.

The budget request includes \$611 million to fight mortgage and financial fraud, including a modest \$55 million targeted increase to hire new FBI agents, new attorneys, new specialized support staff, and new forensic accountants and in-house investigators. This will also be used to combat financial and mortgage fraud, going after the schemers and scammers who prey on hardworking families and destabilize neighborhoods.

We can't have strong, economically vibrant communities unless they are safe. So I want to know how the budget request keeps Americans safe here at home. The request is \$2 billion for grants to State and local law enforcement. This is \$32 million less than fiscal year 2012.

State and local funding has borne the brunt of budget cuts. Since 2010, grants have been cut by \$1.5 billion, or 43 percent. This is a time when we must be frugal. Tough choices have to be made. The CJS Subcommittee is committed to making sure our police are not walking a thin blue line. We need to know which grants are truly most effective and which programs we need to take a closer look at before reinvesting American taxpayers' dollars in them.

A recent Government Accountability Office report recommended that the Attorney General should conduct an assessment to better understand which grant programs overlap with one another to prevent unnecessary duplication. I think that is an excellent recommendation, and I encourage the Attorney General to complete this analysis.

I know how committed the Attorney General is to keeping children safe from abuse, sexual predators, and cyber stalkers. The budget request includes \$328 million to catch predators who use the Internet to stalk children, break up child pornography and prostitution rings, and track down, arrest, and prosecute child molesters.

The FBI and USMS have crucial roles. FBI's Innocent Images initiative targets sexual predators who use the Internet to distribute child pornography. USMS are charged with tracking down and arresting an estimated 100,000 unregistered sex offenders.

The Adam Walsh Act called for 500 new Deputy U.S. Marshals to carry out this mission. But since 2010, we've been able to prevent furloughs and layoffs, but we've been in a holding pattern of 160 new Marshals. I want to make sure we're putting the right resources in the right places to protect children from these despicable predators.

The Department's budget request includes more than \$1.8 billion for Federal law enforcement efforts, including the DEA, ATF, FBI, and USMS, to dismantle drug cartels that smuggle illegal drugs, guns, and humans along the border, and terrorize citizens and neighborhoods with fear and intimidation.

Drug trafficking-related homicides in Mexico continue climbing. There were a sickening 12,100 murders in Mexico last year, up 86 percent since 2009. We are very concerned about spillover violence. I want to know if the funds requested are sufficient to shut down the flow of firearms into Mexico, and to stop drugs and violence from coming into the United States from Mexico.

Our Nation faces a growing and pervasive threat overseas from hackers, cyber spies, and cyber terrorists. We need safe and resilient networks to protect our online banking and commerce, electrical and power grids, air traffic control systems, and digitalized records.

At the Justice Department, more than 1,500 personnel are working to prevent a broad range of cyber threats, such as computer intrusions, Internet fraud, intellectual property theft, and online child pornography; and to identify the perpetrators.

The FBI is tasked with the most urgent cyber security responsibilities. They are on the front lines collecting intelligence and investigating computer intrusions that threaten our critical technology infrastructure. We will hear more details about this next week, when FBI Director Robert S. Mueller, III testifies before this subcommittee. But I want to know what you see as the Justice Department's role as a key guardian of our Nation's cyber security.

Finally, I want to know how the Justice Department is improving accountability of taxpayer dollars so that every \$1 spent to secure our communities is \$1 well-spent. The subcommittee has taken steps to prevent waste, fraud, and abuse; prohibit funds for lavish banquets; control cost overruns; and require the Inspector General to do random audits of grantees. I want to know what concrete steps you have taken to put these guidelines into practice and give teeth to make sure they are followed.

Given all of the Justice Department's important roles and responsibilities, we must ensure that it has the resources it needs to protect the lives of 330 million Americans. But we also want to make sure the Justice Department is a good steward of taxpayer dollars and makes sure every \$1 we spend to keep our Nation safe is \$1 well spent.

I thank Attorney General Holder for his leadership, and I look forward to continuing our work together making a safer, stronger America.

Senator MIKULSKI. I'm going to turn now to Senator Hutchison, and then to you.

STATEMENT OF SENATOR KAY BAILEY HUTCHISON

Senator HUTCHISON. Well, thank you, Madam Chairman, very much, not only for the deference on border security, where I live, but also on the way you run this subcommittee, which is for us to do what's right for America.

Mr. Attorney General, I do want to address some of the areas of border security. First of all, State Criminal Alien Assistance Program (SCAAP) funding is something that continues to be short-changed by your budgets, and SCAAP, of course, is the reimbursement for local counties that incarcerate illegal alien prisoners. And along the border, our counties are generally very poor and don't have those kinds of resources, and each year, you continue to not fund.

We did put the money back in last year, \$240 million, but I would hope that you would support increasing that, as we go through this process, because we must incarcerate these illegal alien criminals, who are mostly in the drug cartel and operations, so that this will not be borne by the counties on the border.

In response to Operation Fast and Furious, language was included in last year's bill that would prohibit Federal law enforcement agencies from selling operable weapons to cartels. This request that you're giving us removes that language, saying it's unnecessary. Mr. Attorney General, we just want to make positively sure that what happened does not happen again, and I would hope that you would support our insertion of that language again.

Last year, our Commerce, Justice, Science, and Related Agencies bill provided \$10 million to expand the capacity at the overcrowded El Paso Intelligence Center (EPIC). And this is critical for our Southwest Border information sharing, and is the border's focal point to help stop the flow of narcotics, combat illegal immigration, and end human trafficking and firearms smuggling.

It is imperative that EPIC and the DEA take full advantage of the resources available from DOJ agencies like the FBI, USMS, and ATF. And I hope that you can give us an update on the status of this funding and the project.

There have been reports that cartels across the border are attempting to recruit college students to smuggle drugs into the country, and it says that minors are more appealing, because criminal penalties are lighter for them. One of the good parts of your budget request is \$312 million for juvenile justice prevention programs. I will be interested in hearing if you are aware of these border threats to our youth, and if some of that money that you are requesting could be put on the border to try to make sure that we try to help our youth overcome the cartel overtures.

The VALOR program, the Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability, is one that I applaud your efforts to put in place. And unfortunately, the number of Federal, State, and local officers who died in the line of duty in America last year increased, from 153 to 173.

The feedback from the training and research being conducted through VALOR is very positive, including the alert center at Texas State University, which was credited by the two officers who came into Fort Hood when Major Nidal Hasan started shooting unarmed military people. Both of those officers survived, even though Sergeant Munley was shot several times. But they both credited their swift response that day to the alert active shooter training program that they had received. So, that's something that's very good that I applaud in your budget.

I want to state a concern that I have about the National Park Service pushing for construction, which is in progress, on an unmanned border crossing at the Big Bend National Park, in south Texas. This is not a DOJ decision, but it is going to affect some of the personnel, and I'm concerned that this is an area where illegal immigrants can walk across. The water is knee deep, and you can walk right across the river, and into Big Bend, and having an unmanned border crossing, I think, is insufficient. So, we're going to talk about that at some point to see if we can get FBI, DEA, ATF, Border Patrol, somebody to man a place like that, where it is so vulnerable.

And last, but not least, Attorney General Holder, I'm going to ask you some questions about your public integrity unit. I'm going to give you full credit for dismissing the case against the late Senator Ted Stevens when you learned of the corruption within that division of your Department. I'm going to ask you questions, because the report will be public within days, and if there's anything that you should take as your major responsibility, it is that the public corruption unit and DOJ is fair and evenhanded, and, clearly, that was not the case in the prosecution of a great friend to many of us, and a great patriot for our country, who, unfortunately, was very badly abused by the DOJ.

But, I will say, you did dismiss the case when you learned of the misbehavior, and I gave you credit on the Senate floor for doing that, and will again, but I do want to ask you about the report when we have time to ask questions.

Thank you.

Senator MIKULSKI. Mr. Attorney General.

SUMMARY STATEMENT OF ERIC H. HOLDER, JR.

Attorney General HOLDER. Thank you. Chairwoman Mikulski, Ranking Member Hutchison, other distinguished members of the subcommittee. I want to thank you very much for the opportunity to appear before you today and for your continued support of the Justice Department's critical work.

I look forward to discussing the President's fiscal year 2013 budget for the Department and how these investments would be used to build on what I think is our extraordinary record of success.

The President's budget proposal demonstrates a clear commitment to advancing the Department's core missions and augmenting our ability to fulfill our most important obligation, and that is protecting the American people. Despite the significant fiscal constraints the Federal Government has faced in recent years, the 116,000 dedicated employees who serve in the Department offices around the world have made significant, and in many cases, historic progress in safeguarding our citizens from terrorism, from violent crime, from financial fraud, and from a range of threats that often disproportionately threaten the most vulnerable members of our society.

We've also proven our commitment to acting as sound stewards of precious taxpayer dollars. As you can see in the most recent budget request, proposed spending increases have been exceeded by proposed cuts. In fact, as a result of numerous steps taken to streamline operations, almost \$700 million worth of savings have been developed and reinvested in critical mission areas. I believe that the Department is perhaps more efficient and more effective than ever before.

Our recent achievements underscore this point, especially when you consider our national security efforts. By continuing to work collaboratively alongside U.S. and international partners, we have identified and disrupted numerous alleged terrorist plots, including one by two Iranian nationals to assassinate the Saudi Ambassador to the United States. We have thwarted multiple plots devised by homegrown extremists, and we have secured convictions and robust sentences against a number of dangerous terrorists.

In October, the Department obtained a guilty plea from Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane on Christmas Day in 2009. Just last month, Abdulmutallab was sentenced to four life terms in prison. In November, we secured the conviction of Viktor Bout, a notorious arms dealer who sold millions of dollars in weapons for use in killing Americans. In December, Waad Ramadan Alwan pleaded guilty to 23 charges, including conspiracy to use a weapon of mass destruction against U.S. nationals abroad, attempting to provide material support to al Qaeda in Iraq, and conspiracy to transfer, possess, and export explosive devices against United States troops in Iraq.

The list goes on and on. With the sustained and increased investments included in the President's budget for the comprehensive national cybersecurity initiative, the high-value detainee interrogation group, the joint terrorism task forces, the Render Safe pro-

gram, and other key national security efforts, the Department will be able to strengthen our critical surveillance and intelligence gathering capabilities.

It will also allow us to bring our fight against financial fraud to a new level. On Monday, as many of you know, President Obama issued a proclamation to mark the beginning of this year's Consumer Fraud Protection Week, and I'm proud to note that the Justice Department's Consumer Protection Branch has established a record of success in defending the interests of American consumers that is worth celebrating and will be expanded upon.

In 2011 alone, our Consumer Protection Branch attained a 95-percent conviction rate, recovered more than \$900 million in criminal and civil fines, restitution, and penalties, and obtained sentences totaling more than 125 years of imprisonment against more than 30 individuals. This represents remarkable and unprecedented progress, but it really is only the beginning. In fact, since the start of the administration, the Justice Department has signaled an unwavering commitment to combating and preventing a wide range of financial and healthcare fraud crimes, and we've taken bold steps to address the causes and the consequences of the recent economic crisis.

Through the efforts of the President's financial fraud enforcement task force, which was launched in 2009, and which I'm proud to chair, charges have been brought against numerous CEOs, CFOs, corporate owners, board members, presidents, general counsels, and other executives of Wall Street firms, hedge funds, and banks who have engaged in fraudulent activity.

In recent months, we have obtained prison sentences of up to 60 years in a variety of fraud cases, including multi-million-dollar Ponzi schemes, and the largest hedge fund insider trading case in U.S. history.

Just this week, we secured a conviction against the former board of directors' chairman for an international bank for orchestrating a \$7 billion investment fraud scheme. The task force has established two new working groups: the Consumer Protection Working Group, which will enhance civil and criminal enforcement of consumer fraud, and the Residential Mortgage-Backed Securities (RMBS) Working Group, which bring Federal and State partners together to investigate and to prosecute abuses in our housing markets. Both will help to amplify existing efforts, and to foster cooperation and collaboration in the Department's response to these problems.

Just a few weeks ago, a similar collaborative approach led the Departments of Justice and Housing and Urban Development, as well as other agencies, and 49 State attorneys general to achieve a landmark \$25 billion settlement with the Nation's top five mortgage servicers, the largest joint Federal and State settlement in our Nation's history.

Although this will not, on its own, cure all that ails our housing market, this agreement builds on the record fair lending settlement obtained by the Civil Rights Division's fair lending unit last year, and will provide substantial relief to homeowners. It also provides a blueprint for future collaboration across levels of government, State borders, and party lines.

There is perhaps no better illustration of our recent progress than the Department's groundbreaking work to combat healthcare fraud. Over the last fiscal year alone, in cooperation with the Department of Health and Human Services, as well as other partners, by utilizing authorities provided under the False Claims Act and other essential statutes, we were able to recover nearly \$4.1 billion in funds that were stolen or taken improperly from Federal healthcare programs. That is the highest amount ever recorded in a single year.

Over the same period, we opened more than 1,100 new criminal healthcare fraud investigations, secured more than 700 convictions, and initiated nearly 1,000 new civil healthcare fraud investigations. For every \$1 that we have spent combating healthcare fraud, we have returned, on average, about \$7 to the United States Treasury, the Medicare Trust Fund, and others.

These numbers are stunning, but my colleagues and I recognize that we cannot be satisfied, and this is no time to become complacent. That's why in addition to helping us build on this record of success, the President's budget request also would bolster our fight against drug trafficking, international crime networks, gangs, and cyber criminals. It would increase our efforts to protect the law enforcement officers who keep us safe, and expand upon the work being done by our Civil Rights Division to guarantee that the rights of all Americans are protected in border areas, workplaces, housing markets, and voting booths.

PREPARED STATEMENT

I am committed to building on these and our other many achievements, and I know that you understand that in this time of uncommon threats and complex challenges, we simply cannot afford to cut back on the amount and the quality of justice that we are obligated to deliver. The Department must remain vigilant in protecting this Nation and in enforcing the law, and these efforts must be appropriately and adequately funded.

I look forward to continuing to work with the members of this subcommittee and your colleagues throughout the Congress to accomplish this, and I would be happy to answer any questions that you might have.

Senator MIKULSKI. Thank you, Mr. Attorney General. And your full statement will be entered into the record.

[The statement follows:]

PREPARED STATEMENT OF ERIC H. HOLDER, JR.

Good morning Chairwoman Mikulski, Ranking Member Hutchison, and members of the subcommittee. Thank you for the opportunity to meet with you today to discuss the President's fiscal year 2013 budget for the Department of Justice (DOJ) and the Department's key priorities.

I also appreciate the opportunity to tell you more about the good work that is being done by DOJ employees across the United States and overseas to protect all of our citizens from harm and to ensure equal protection under the law, in order to promote "liberty and justice for all."

The President has emphasized his goal to stabilize the economy by creating new jobs and reducing our national debt through greater revenue generation and spending cuts. To assist in the economic recovery, we continue to ask even more from our talented DOJ personnel. This is as true in DOJ as it is in the rest of the Federal Government.

The President has asked DOJ to do more with less, recognizing that many across the country are still suffering; I am committed to presenting the Congress with a serious and thoughtful budget, which clearly reflects this awareness, and allows us the resources to faithfully carry out DOJ's mission and fulfill our obligation to the American people.

Upon careful examination of our mission and the range of the priorities I will present here we cannot simply "cut back" on the extent or quality of justice that we are obliged to deliver; we cannot cease to enforce the law. We cannot ignore an indictment, or choose at the end of the process not to imprison a criminal, if sentenced. We are responsible for enforcing the law, and these efforts must be funded.

What we can and must do, however, is examine the way we do our work, and find better ways to continue to do it well. In response to my call for savings across DOJ, my staff developed almost \$700 million worth of budget offsets, so that we can reinvest that money and protect DOJ's core mission and priorities. In presenting DOJ's fiscal year 2013 budget, we have aligned the entire amount to pay for high-priority, mission-related needs. Specifically, we have proposed \$228 million in program increases. Our overall discretionary budget authority is reduced from \$27.2 billion in fiscal year 2012 to \$27.1 billion in our fiscal year 2013 request.

In this fiscal year 2013 budget, we have proposed changes in operational accounts, as well as leadership offices. We have used balances from prior years that were left on the books to offset this year's costs, and we tried to find less expensive ways to accomplish the same outcome.

Each of our proposed reorganizations and realignments has been developed with one goal in mind, to save taxpayers money, while remaining dedicated to our mission to protect our citizens. I can assure you that none of our reorganizations or realignments will compromise this fundamental mission; personnel and resources will be shifted to achieve the same end, to remake DOJ in ways that make us more responsive to the American people whom we proudly serve.

To be clear, then, we at DOJ recognize that we are accountable to the American people, to identify and eliminate areas of waste, fraud and duplication, and also to marshal limited resources for the greatest return on investment. I have carefully reviewed with my staff DOJ's fiscal year 2013 budget request, and have directed them to focus resources on programs that have a measurable impact and demonstrate success in keeping our citizens safe.

In his fiscal year 2013 budget, President Obama proposes that the Congress fund the work of DOJ in the amount of \$27.1 billion. In this hearing, I would like to focus on DOJ's work in six critical areas, namely,

- To sustain our Nation's security interests;
- To uphold DOJ's traditional mission programs;
- To combat financial, mortgage, and healthcare fraud;
- To support our State, local, and tribal law enforcement partners;
- To invest in Federal prisons and enhance detention capacity; and
- To streamline programs and operations across DOJ.

NATIONAL SECURITY

The fiscal year 2013 budget includes a total of \$4 billion to sustain our first priority—DOJ's national security mission. As with our law enforcement mission, the Department continues to work to build strong ties with intelligence and security partners around the world, to protect the American people. At the same time, we are diligent in protecting U.S. technologies, goods, services, and national security interests from illegal tampering, malicious manipulation and acquisition by other countries, in order to maintain our Nation's competitive edge.

The funding previously enacted, which the fiscal year 2013 budget maintains, for our national security programs ensures the continuation of critical investments made to improve intelligence coordination; expands information sharing efforts with trusted counterparts; secures our cyber infrastructure; widens investigations of drug trafficking organizations with ties to terrorist groups; and continues to extend anti-terrorism training to our law enforcement partners.

In the past year, we were successful in several key national security investigations. In October, DOJ obtained the conviction against Umar Farouk Abdulmutallab for his role in the attempted bombing of an airplane full of holiday travelers on Christmas Day in 2009. He was sentenced to life in prison earlier this month. Working closely with our United States and international partners, we thwarted a plot by two Iranian nationals to assassinate the Saudi Ambassador to the United States, as well as numerous other suspected plots by homegrown violent extremists. We also secured the conviction of notorious arms dealer Viktor Bout for his efforts to sell millions of dollars of weapons for use in killing Americans. In May of last year,

a grand jury indicted Waad Ramadan Alwan on 23 charges, including conspiracy to use a weapon of mass destruction against United States nationals abroad; attempting to provide material support to al Qaeda in Iraq; and conspiracy to transfer, possess, and export explosive devices against United States troops in Iraq. In December, Alwan pleaded guilty to all 23 charges.

In the fiscal year 2013 budget, DOJ seeks to maintain critical counterterrorism and counterintelligence programs, and sustain significant, recent increases related to intelligence gathering and surveillance capabilities; detecting and deterring cyber intrusions and fully supporting cybersecurity through the Comprehensive National Cybersecurity Initiative. We also look to maintain our investments supporting the High Value Detainee Interrogation Group; the Joint Terrorism Task Forces; and the Render Safe Program.

TRADITIONAL MISSION PROGRAMS

In the fiscal year 2013 budget, DOJ seeks increases of \$31.8 million in support of programs in DOJ's traditional core mission of combating violent crime, cybercrime, crimes against children, and criminal trafficking in persons; and enforcing the Nation's civil rights and environmental laws.

Criminal Law

In combating organized crime, I announced in January 2011 the single largest operation against the mafia ever undertaken by the Federal Bureau of Investigation (FBI), the result of unprecedented cooperation among Federal, State, local, and foreign law enforcement personnel. The operation resulted in the arrest of more than 100 suspected mobsters—all without a hitch. In July, we announced the results of Project Delirium, a Drug Enforcement Administration (DEA) operation targeting La Familia Michoacana (Mee-shoa-CA-na), a violent drug cartel and supplier of most of the methamphetamines smuggled into the United States. Working with other Federal, State, local, and foreign law enforcement partners, including the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF), DEA oversaw more than 1,900 arrests and the seizure of more than \$63 million in U.S. currency; more than 2,700 pounds of methamphetamine; more than 2,700 kilograms of cocaine; 900 pounds of heroin; nearly 15,000 pounds of marijuana; and \$3.8 million in other assets. An ATF investigation targeting a gang in Philadelphia known as the Young Hit Men or Harlem Gang resulted in an 89-count superseding indictment charging 23 members with an array of Federal violations, including multiple firearms violations. The trial of these gang members is scheduled for May. And finally, in 2011, the U.S. Marshals Service (USMS) captured nearly 125,000 fugitives, including 7 from their "Fifteen Most Wanted" list in 2011. This was the fourth consecutive year that the USMS captured more than 100,000 fugitives. These are only highlights, but, as you can see, it's been a busy year for DOJ.

Investigating cyber crime and protecting our Nation's critical network infrastructure is another of DOJ's top priorities. Successful cyber attacks can have devastating effects on our national security, infrastructure, and economy; and hackers have been relentless in their efforts to attack U.S. Government agency Web sites, including ours. In combating these efforts, we continue to build and strengthen our capabilities to counter and prevent these attacks. Here again, DOJ works on a global scale to achieve success, in cooperation with our law enforcement partners abroad. FBI estimates that Americans lose hundreds of millions of dollars to cyber criminals based in Eastern Europe alone. Working closely with the FBI Cyber Division and with our legal attaché personnel in Bucharest, our Romanian counterparts have arrested more than 300 cyber criminals in the last 3 years. Our efforts to build relationships with foreign counterparts continue to produce real dividends. FBI, the DOJ Office of International Affairs, and the Southern District of New York cooperated closely with the Israeli National Police and the Israeli Ministry of Justice. Together, we took down two boiler rooms in Israel that had targeted elderly persons in the United States in a lottery telemarketing scam, and had swindled them out of more than \$10 million of their hard-earned savings. Thanks to this cooperation, 24 members of the ring were arrested in Israel and the United States; and 19 of the 21 have been extradited to the United States. Most pleaded guilty, and have been sentenced.

In fiscal year 2013, DOJ is requesting an increase of \$15.2 million within the Justice Information Sharing Technology program to transform, strengthen, and protect DOJ internal networks. This will counter newly emerging cyber security threats, including insider threats, provide advanced intrusion detection and response capabilities, and implement cost-efficient scalable enterprise architecture.

The fiscal year 2013 budget also includes \$3 million in new investments to combat transnational criminal organizations, and a total of nearly \$2 billion to maintain the

security of our Nation's Southwest Border. The budget also increases funding for international investigation and deterrence of intellectual property crime by \$5 million, which brings our investment to nearly \$40 million annually to combat online piracy and otherwise protect our Nation's intellectual capital and maintain our competitive edge in developing American ideas and technologies to better compete in the global marketplace.

DOJ's budget request also supports our continuing work to prevent, investigate, and prosecute child exploitation crimes. Sadly, our caseload in this area continues to increase. Our budget request will fund ongoing efforts to investigate and prosecute offenders such as those who participated in the so-called Dreamboard, an international, members-only, online bulletin board that was dedicated to the sexual abuse of children. Just as Dreamboard's members operated across international boundaries in committing their crimes, so too did law enforcement personnel work across boundaries to take down this nefarious ring. To date, 72 Dreamboard members have been indicted; 53 have been arrested in the United States and abroad.

DOJ has successfully investigated and prosecuted public corruption, not only in the several high-profile cases that made the news, but across the United States. The American electorate trusts that their public servants will obey the law; they expect DOJ to bring to full justice those who abuse that trust.

Civil Rights

A fundamental highlight of DOJ's budget request for traditional mission programs is \$5 million in new resources for the Civil Rights Division to prevent and combat human trafficking; hate crimes; and misconduct by law enforcement and public officials. These issues warrant our greater investment and vigilance as we advocate for every American—without exception. Safeguarding the civil rights of every American is at the heart of what we do, and represents our core mission. In this good work, DOJ continues to achieve success and helps our Nation to create “a more perfect union”.

In seeking redress for the host of inequities uncovered by the mortgage morass, DOJ has fought especially hard to protect the civil rights of Americans. Recently, I announced that DOJ had reached a \$335 million settlement with a lender to resolve allegations of lending discrimination against African-American and Hispanic borrowers who qualified for mortgage loans, but were charged higher interest fees or were steered into sub-prime loans, solely because of their race and/or national origin. More than 200,000 Americans will be entitled to compensation. We have also acted to protect the civil rights of our servicemembers who have been targeted by these unconscionable, predatory lending practices. In May 2011, we announced settlements with two lenders to resolve allegations that they had wrongfully foreclosed upon active-duty servicemembers without first obtaining court orders, in clear violation of the Service Members Civil Relief Act. The settlements provided more than \$22 million in compensation to our men and women in uniform who were forced to worry about their families and losing their homes through unlawful foreclosures, while also having to endure the horrors of war. We fought hard for them because we believe that, as Americans, we are much better than that, and that our fellow citizens, who place their lives on the line for all of us, deserve far better than that.

Our other civil rights priorities in fiscal year 2013 include a greater focus upon combating human trafficking; in uncovering and prosecuting hate crimes that target Americans for who they are and what they believe; in upholding and enforcing the constitutional right of every eligible American to participate in our Nation's political process and vote freely; and fully implementing provisions of the Civil Rights for Institutionalized Persons Act.

Environment and Natural Resources

Since 2011, a team of our agents and prosecutors continues to lead the Deepwater Horizon Task Force, which has investigated the conduct of those involved in the tragic explosion and oil spill that claimed the lives of 11 people; despoiled the coastal waters of the Gulf of Mexico; killed scores of wildlife; and damaged the vibrant economy of a beautiful region, which our citizens have struggled mightily to restore.

Financial, Mortgage, and Health Fraud

In our fiscal year 2013 budget, DOJ seeks an increase of \$55 million, for a total investment of more than \$700 million, to investigate and prosecute financial and mortgage crimes that have sorely hurt the American people and damaged their trust in the financial markets they expect to engage in fair play. The abuses by many in the financial sector have had a devastating effect on the U.S. economy, and have contributed significantly to the economic suffering of so many Americans. It is essential that DOJ address these abuses forcefully, to hold fully accountable those who are responsible for these abuses and ensure that they are not repeated. In this

budget, we propose an increase in specialized staffing and technologies to combat and root out fraud in the area of securities and commodities; investment scams; mortgage foreclosure schemes; and increasingly, in healthcare fraud.

The program increase of \$55 million would provide funding for additional FBI special agents, criminal prosecutors, civil litigators, in-house investigators, forensic accountants, and paralegals to hone DOJ's capacity to investigate and prosecute the full spectrum of financial fraud. Bringing aboard specialized and dedicated personnel, especially investigators and forensic accountants, is key to our successful detection and prosecution of complex financial schemes, and helps us to stay well ahead of the criminals who devise them. Of the \$55 million program increase, \$37.4 million is to increase criminal enforcement efforts and \$17.6 million would increase civil enforcement efforts. Our total request also includes \$9.8 million for technology tools and automated litigation support.

We have already been actively engaged in these efforts. Since fiscal year 2010, the Financial Fraud Enforcement Task Force has spurred investigation and prosecution of financial fraud that has been uncovered by the 2008 financial crisis and economic recovery efforts. The task force has charged and sentenced a great number of defendants involved in securities fraud, investment fraud, Ponzi schemes, and other financial fraud. In October 2011, the managing member of Galleon Management LLC was sentenced to 11 years in prison, based on DOJ's investigation of the largest hedge fund insider trading scheme in history. We also continue to aggressively prosecute those who commit mortgage fraud. Mortgage fraud victims include distressed homeowners preyed upon by fraudsters posing as foreclosure rescue experts; the elderly who are victimized in Home Equity Conversion Mortgage or "reverse mortgage" schemes; U.S. servicemembers; and entire neighborhoods blighted by blocks of abandoned homes. In fiscal year 2011, the U.S. Attorneys' offices filed 513 cases against 947 defendants, an increase of 92 percent in just 2 years.

Earlier this month, I joined Housing and Urban Development Secretary Shaun Donovan and the Attorneys General of Colorado, Indiana, North Carolina, Illinois, and Iowa to announce the unprecedented agreement reached by the Federal Government and State attorneys general with the Nation's five largest mortgage servicers to address mortgage loan servicing and foreclosure abuses. This agreement—the largest joint Federal-State settlement ever obtained—provides substantial financial relief to homeowners and establishes significant, new homeowner protections. It holds mortgage servicers accountable for abusive practices and requires them to commit more than \$20 billion toward financial relief for consumers. As a result, struggling homeowners throughout the country will benefit from reduced principal amounts and the refinancing of their loans. The agreement also requires substantial changes in how servicers do business, which will help to ensure the abuses of the past are not repeated.

Moreover, on January 27, I announced the formation of the Residential Mortgage-Backed Securities Working Group, supported by current manpower and funds, to leverage State and local resources in a nationwide effort to investigate and prosecute crimes in the residential mortgage-backed securities market. DOJ will join the Securities and Exchange Commission and the New York State Attorney General under authority of the Financial Fraud Enforcement Task Force in leading the working group, which will be staffed by at least 55 DOJ agents, analysts, investigators, and attorneys from around the United States.

Finally, DOJ remains fully engaged with the Department of Health and Human Services (HHS) to prevent and combat healthcare fraud. Earlier this month, HHS Secretary Kathleen Sebelius and I reported the success of our joint efforts, having recovered nearly \$4.1 billion for U.S. taxpayers in fiscal year 2011. The 3-year average return on investment for healthcare fraud funding in fiscal year 2011 was more than \$7 for every \$1 invested—the highest ever for this program.

In fiscal year 2013, we plan to redouble our efforts and ask the Congress for \$294.5 million through the HHS budget for healthcare fraud funding to support DOJ initiatives to combat civil and criminal healthcare fraud. Increased funding will permit DOJ to expand Medicare Fraud Strike Force operations and to more effectively target locations where healthcare fraud activities are rampant. We also propose additional support to bolster civil enforcement efforts, including False Claims Act matters, to investigate and prosecute fraud by medical and pharmaceutical providers.

STATE, LOCAL, AND TRIBAL LAW ENFORCEMENT

In our fiscal year 2013 budget, DOJ seeks a total of \$2 billion to assist State, local, and tribal law enforcement personnel, especially in combating violent crime

and violence against women and all other victims of crime, and in supporting victim programs.

DOJ's budget request is strong on law enforcement; it's strong on solid program research and development; it's strong on juvenile justice; and it's strong on innovation. In presenting this budget request, we've taken a long, hard look at what has worked best in these areas, in order to extend these best practices across the broad range of our work.

The key to DOJ's success in protecting the American people continues to be in developing effective partnerships with law enforcement counterparts throughout the United States and abroad to leverage a more focused and effective law enforcement response. To put this in perspective, there are 65,000 U.S. Federal agents dedicated to criminal investigations; by comparison, there are 700,000 State and local law enforcement officers in the United States, not to mention scores of others who work for agencies from other nations. Crime is increasingly transnational and global in scope, and criminals respect no boundaries. We owe it to the American people to work closely with our partners—at home and abroad—to prevent these criminals from harming our citizens, and to ensure that those who do so are brought to justice.

Here at home, one of our most important partnering programs is the Community Oriented Policing Service (COPS) grant program. These grants assist State and local police in hiring officers for targeted patrol and other proven strategies to reduce and prevent crime. From fiscal year 2009 through fiscal year 2011, the COPS office funded more than 7,100 positions. More than 5,000 of these positions have been filled so far; nearly 4,000 of them as new hires. The budget requests an additional \$91 million for the COPS hiring program in fiscal year 2013, for a total of \$257.1 million. Of this amount, \$15 million will be dedicated to community policing development initiatives and \$15 million will be directed to tribal jurisdictions.

It is worth noting that COPS will be giving preference in any fiscal year 2012 hiring grant award to communities that hire post-9/11 veterans of our armed forces. Put simply, this is the right thing to do, and I assure you that this policy will continue in grants funded by the fiscal year 2013 appropriation.

To give you an idea of the impact that COPS funding has had within local communities, let me tell you about Fresno, California. Given budgetary constraints, the Fresno Police Department had lost 100 sworn police officer positions and 265 civilian positions over a 3-year period. COPS funding added 41 front-line officers who helped Fresno reduce violent crime by targeted removal of dangerous criminals from the community's streets. The results are impressive. In 2011, Fresno experienced decreases in violent crimes across the board and had its lowest murder rate in a decade. Without COPS funding, the Fresno Police Department would have been forced to disband its violent crime impact team and redeploy officers into patrol, and merely react to crime. Instead, COPS funding helped the people of Fresno become more active in safeguarding their community.

In this area, too, DOJ seeks funding for grant programs proven to be effective in preventing crime. Increased funding is requested for the Byrne Criminal Justice Innovation Program; for residential substance abuse treatment; for Second Chance Act implementation; for Part B Juvenile Justice Formula Grants; and for a new, evidence-based juvenile justice competitive demonstration grant program.

The Adam Walsh Act significantly enhances DOJ's ability to respond to crimes against children and vulnerable adults, and to prevent sex offenders who have been released back into the community from victimizing others. The fiscal year 2013 budget also includes \$20 million for States and local jurisdictions, and an additional \$1 million to develop the National Sex Offender Public Web site.

Finally, a significant outlay under the fiscal year 2013 budget includes increased funding to squarely address domestic violence and child abuse in rural areas through support of projects specifically designed to prevent these crimes in rural jurisdictions. A significant portion of these funds will be dedicated to implementing public safety programs in Indian country, to assist tribal law enforcement partners in reducing the disproportionately high levels of violent crime there.

PRISONS AND DETENTION

In DOJ's fiscal year 2013 budget, we are seeking \$8.6 billion to ensure that prisoners and detainees are held in secure Federal facilities and to improve Federal prisoner re-entry.

Last year, DOJ made strategic investments to enhance the Nation's security and make communities safer. There are more than 2 million people incarcerated in the United States; estimates project the Federal inmate population in the United States to increase by 6,500, in addition to the estimated 5,000 inmates who will be proc-

essed in fiscal year 2012. The fiscal year 2012 enacted appropriation included partial funding for activation of new prisons in Alabama and New Hampshire. In the fiscal year 2013 budget, DOJ requests funding to fully activate these facilities and initiate two others, in Mississippi and West Virginia. In all, DOJ plans to add 2,500 prison beds and 1,000 new, low-security contract confinement beds in fiscal year 2013. DOJ will also direct increased funding to hire additional corrections workers and cover increased costs to transfer, accommodate, and secure the larger prisoner population.

While opening the secure facilities we need to confine criminals, DOJ's budget request also addresses the parallel need to free up prison space and reduce long-term detention and incarceration costs. This budget recognizes the need to work with you in the Congress to make simple changes to the calculation of good conduct time, and to explore ways to further reduce recidivism. These proposals provide proven incentives for good behavior among certain eligible, nonviolent inmates, and their participation in programs designed to keep them from returning to prison, and will have a direct impact in relieving overcrowding in Federal prisons. Beyond the steps proposed in this budget, the Federal Government has an opportunity to build on the work of States like Texas and Indiana to modernize criminal sentencing, ensuring that violent and career criminals remain behind bars and off the streets, while strengthening programs to help eligible, nonviolent offenders to safely and productively re-enter their communities.

The programs we propose to fund aim to reduce recidivism by expanding participation in these re-entry programs. DOJ's fiscal year 2013 budget request includes expansion of the Bureau of Prison's residential drug abuse program, which supports Second Chance objectives. This expansion will enable greater use of the sentencing credits available to eligible, nonviolent inmates who complete drug treatment programs. Thus, as this program contributes to reducing crime, it will also result in fewer taxpayer resources directed at incarcerating inmates.

SAVINGS AND EFFICIENCIES

DOJ's fiscal year 2013 budget presents a highly streamlined array of programs, which will help us to achieve our mission more efficiently while protecting the American people more effectively.

DOJ proposes almost \$700 million in efficiencies, offsets, and rescissions. We at DOJ recognize that we must do our part to help our Nation maintain its sound fiscal footing. In our fiscal year 2013 budget request, we seek to balance fiscal responsibility demanded by the American people with DOJ's national security and law enforcement mission to prevent, prosecute, and bring to justice all who would do us harm.

In leading this effort, I directed DOJ staff to identify areas where we would achieve significant savings for the American taxpayers by implementing changes in the way we execute our mission. These changes include improving the way we target funding, seeking support for programs that work; redirecting funding from the Department level to component agencies to reduce overhead and increase operational efficiency; and consolidating offices and redirecting or reducing personnel and resources.

In all, we identified \$646.6 million in administrative efficiencies, nongrant program reductions, and rescissions of prior-year balances, which will reduce our bottom line without impairing our mission or capabilities.

In submitting DOJ's fiscal year 2013 budget request, I emphasize that we continue to hold the line on expenses, seek to eliminate waste, and promote efficiencies. In this request, we propose to reorganize DOJ by consolidating offices. In doing so, we will become a leaner, more agile, and more responsive organization. Our goal is to enhance our service to the American people, without sacrificing the essential mission. Instead, we intend to realign our staff and resources to meet the greatest needs.

In proposing these realignments, we add our efforts to the President's Campaign to Cut Waste. In July 2010, I launched DOJ's Advisory Council for Savings and Efficiencies, or the SAVE Council, to focus these efforts within DOJ. In just the last 2 years, the SAVE Council has helped DOJ realize nearly \$60 million in savings and cost avoidance.

The fiscal year 2013 budget includes savings expected from merging detention functions currently performed by the Office of the Federal Detention Trustee into USMS, merging core functions of the National Drug Intelligence Center into DEA, and transfer management of the Law Enforcement Wireless Communication program to FBI, returning funding and the concomitant responsibility for radio operations and maintenance to DOJ's law enforcement components.

Additional savings and efficiencies were identified in the areas of information technology, space requirements, overhead, administration, and operations. For example, the IT offset represents savings that will be developed through greater inter-component collaboration in IT contracting; funds will be redirected to support DOJ's cyber security and IT transformation efforts and other high-priority initiatives.

CONCLUSION

In conclusion, I am keenly aware that the President and I have asked DOJ's dedicated employees to do much more with fewer resources during this period of economic recovery. That they have done so with continued dedication to our mission to protect the American people is truly exemplary and inspiring.

I appreciate this opportunity to tell you about our good work at the Department of Justice, to thank you for your support to date, and to ask you to fund the important work that lies ahead.

At this time, I would be pleased to take your questions.

Senator MIKULSKI. As a matter of senatorial courtesy, we're going to turn to Senator Shelby, who has a Banking Committee hearing that he must join, then I'll pick up, followed by Senator Hutchison. We will recognize the members in order of arrival, and we'll follow the 5-minute rule.

Senator Shelby.

STATEMENT OF SENATOR RICHARD C. SHELBY

Senator SHELBY. Thank you. Thank you, Madam Chairman. Good morning, Mr. Attorney General.

Attorney General HOLDER. Good morning.

TERRORIST EXPLOSIVE DEVICE ANALYTICAL CENTER AND NATIONAL CENTER FOR EXPLOSIVES TRAINING RESEARCH

Senator SHELBY. Two key DOJ facilities will soon be operating on Redstone Arsenal: The FBI's Terrorist Explosive Device Analytical Center (TEDAC), and the ATF's National Center for Explosives Training Research (NCETR). These two national assets will help law enforcement officials deal with the growing threat posed by terrorists and criminal use of powerful explosives.

You and I have discussed these facilities previously, and I believe you agreed then with me that the missions of NCETR and TEDAC are distinct, but complementary, and that it made sense to colocate them at Redstone, where there's a lot of property, a lot of land.

For the benefit of the subcommittee, Mr. Attorney General, can you describe how DOJ will utilize NCETR and TEDAC?

Attorney General HOLDER. TEDAC, run chiefly by the FBI, deals with the examination of improvised explosive devices (IEDs), that we see coming out of Afghanistan and other places. NCETR, by contrast, run by the ATF, deals with other, more common explosive devices.

Senator SHELBY. More prevalent maybe?

Attorney General HOLDER. More prevalent explosive devices that we see. I think that you're right, they have fundamentally different responsibilities, but they complement one another, and the location of them in that place makes a great deal of sense.

Senator SHELBY. Could you describe the value of colocating these facilities on a large Federal arsenal, with lots of range of space?

Attorney General HOLDER. Yes. I think there's a great deal of cross-pollination, the ability to talk to one another. Although the purposes are distinct, there are going to certainly be scientific

things, breakthroughs, perhaps, that you can exchange information about by having people who are relatively close by. Having the two agencies that are primarily responsible for explosives determination and prevention close by each other, even though they have distinct roles that have been pretty well delineated—it is good to have them there and talking to one another.

Senator SHELBY. Also, you're aware that the community there, near Redstone, Huntsville, has the highest per capita Ph.D. communities in science and engineering.

Attorney General HOLDER. There are a lot of smart people there. That's true.

Senator SHELBY. You plan to utilize that then.

Attorney General HOLDER. Yes. We'll use smart people wherever we can find them. There are a lot there. That is fair.

ACTIVATION OF ALICEVILLE FEDERAL CORRECTIONS INSTITUTE

Senator SHELBY. Well, I want to go to another question. People make mistakes and pay for it, I guess.

Attorney General Holder, the Justice Department is seeking funds this year to activate a new women's prison in Aliceville, Alabama. This prison was designated as a female-only facility, based on input from your Department, and it cost nearly \$250 million when it was finished. Does the Department plan to activate this soon? I know you've got a lot in it. The Bureau of Prisons (BOP) said that was one of their top priorities.

Attorney General HOLDER. We want to activate it. It was specially designed to deal with the unique needs that female prisoners have. We need to expand our capacity to handle female prisoners in the Federal system. Given the fact that the facility was specially configured for female prisoners, it would be our hope to activate it as quickly as we can, and for the use for which it was designated.

Senator SHELBY. Well, you've got a lot in it, and it's finished. And I'd hope you would do that soon, because to activate it, it costs hardly anything, compared to what it cost to build.

Attorney General HOLDER. No. I don't disagree with that. The need is clearly there for the expanding female population, unfortunately, that we see in the Federal prison system.

Senator SHELBY. It would be a priority for you?

Attorney General HOLDER. Yes.

Senator SHELBY. In that area.

Attorney General HOLDER. We want to bring online as many of these facilities we can, and this is one that, as I understand it, is extremely close, where we're just about ready to open it.

Senator SHELBY. Good. Madam Chairman, thank you very much for taking me out of order, and I appreciate it very much.

Senator MIKULSKI. Mr. Attorney General, I have two questions. I had many, but we'll submit them for the record.

FEDERAL PRISON FUNDING

First of all, Federal prisons. As I look at the Department's budget, almost one-third of the Justice Department money is going into Federal prisons. That amount is now at \$6 billion, and it is rapidly approaching almost what the FBI budget is, which is \$8 billion.

Now, my question is: What's going on with Federal prisons? First of all, we want the bad guys and gals off the street. So we want you to prosecute and incarcerate, particularly where there are people who constitute a danger to our country or to our communities. I don't know if we can sustain this growth, and then I'm concerned about once we put them in, it's a revolving door, and we keep expanding their prisons with the same people. They keep coming back.

Could you elaborate on your Department's needs? Are there any recommendations you'd have to begin to contain the prison population? Are we federalizing too many crimes? Is recidivism the problem? Again, safe streets—but this is really an ever-increasing part of our appropriations.

Attorney General HOLDER. There are a whole variety of reasons why we see the prison population expanding. We now have about 215,000 people in the Federal system. That number goes up every year, and it is for that reason that we consistently come back to this subcommittee asking for additional funds for BOP.

There are a variety of reasons why you see people coming into the system. We are good partners with our State and local counterparts, and we try to help them, to the extent that we can. And so, some cases violate both Federal and State law, and if they are very serious criminals, we bring them to the Federal system if there are evidentiary rules or more harsh sentences that we can give to them.

I think the point that you hit on, that we really need to focus on, is how can we rehabilitate people so that we cut down on recidivism rates? One of the things that we have talked about is the Second Chance Act, coming up with ways in which we make available to people re-entry possibilities, so that they have the chance of not being recidivists, coming up with educational, vocational, drug treatment programs while we have them in prison.

We've actually seen pretty good success being made by some State systems that has been shared with me by the Pew Research Foundation. I think we can learn a lot from them in that regard.

Senator MIKULSKI. Well, Mr. Attorney General, we would really look forward to specific recommendations. We want our local and our Federal law enforcement to prosecute and get bad people off the street, whether they're terrorists or whether they're terrorizing a neighborhood, like some of the drug dealers in some of my own communities in Maryland.

At the same time, we don't want our Federal prisons to be an incubator for more crime, where the lessons that they learn when they go to prison is not to commit crimes again, but how to be better crooks. We want our prisons to teach them how to be better citizens, and then to come back to a community support system where they don't fall back into the behavior that got them.

So, I'm concerned that our Federal prisons are such that we need to really look and evaluate, and learn some of these lessons. So, we want to work with you. I know you feel that way. You're very experienced in street crime, which takes me to the other point.

COMMUNITY ORIENTED POLICING SERVICE GRANTS

Ultimately, you've done this fantastic job of fighting terrorism, keeping America safe. It's been stunning what our national security services have accomplished, both military and civilian. Again, I'll come back to streets and neighborhoods. You know, we have communities that face crime every single day. And we talk to our local law enforcement, our local prosecutors' offices, and so on. They feel they're under the gun. They need Byrne grants, they need Cops on the Beat, and so on.

Do you feel that this is sufficient funding? In fiscal year 2010, we had \$3.7 billion that went into State and local grants. Due to acts of the Congress and so on, now, we're down to \$2 billion. Yet, everywhere I go in Maryland, from our local police commissioners to local district attorneys, or States' attorneys, as they're called in my State, people say we need those Justice Department grants. They give us better technology. They give us tools to deal with violence against women. They express gratitude for the lethal index. They need you. They love having you as a partner.

Do we have enough money in the right places to do the job to protect our communities?

Attorney General HOLDER. We have in the budget request \$2.04 billion for State and local assistance programs; \$1.4 billion for Office of Justice Programs (OJP); about \$290 million for COPS; and \$412 million for the Office on Violence Against Women (OVW).

This is the level that's about equal to the level we requested last year. It is lower than numbers that you had said. But, I think that given the budget realities that we face, the amount that we have requested is strong on law enforcement. It's strong for science. It's strong for victims.

Would I like to have more money? Yes, but the budget realities that we confront, and the need to stay within a budget in the executive branch have gotten us to this point. I think that through the provision of this money, through the technical assistance that we can also provide to our State and local partners, we can do the job.

I met with the National Association of Attorneys General just this week, and I think the partnership that we have is an unprecedented one. I think that the combination of that partnership, the sensitivity that we have to their needs, and the \$2 billion that we are seeking here will allow us to be good partners.

Senator MIKULSKI. Well, we have many questions. So, I'm going to turn to Senator Hutchison.

What I would find very helpful is two things. One, if you look at your Byrne grants, Cops on the Beat, and so on, what was the amount of money requested by State and local people to apply for those grants, and what could you fund?

Attorney General HOLDER. Yes. I mean the request—oh. Sorry.

Senator MIKULSKI. No. My time's up. So I'd like that for the record.

[The information follows:]

FUNDS REQUESTED BY STATE AND LOCAL ORGANIZATIONS FOR BYRNE GRANTS

COMMUNITY ORIENTED POLICING SERVICE OFFICE

In 2011, the Community Oriented Policing Service (COPS) office made 238 awards to fund 1,021 law enforcement officer positions, totaling \$243,398,709. The total amount requested was \$2,067,924,397 from 2,712 law enforcement agencies.

OFFICE OF JUSTICE PROGRAMS

Because individual Byrne Justice Assistance Grant (JAG) program awards are determined and limited by a specific, statutorily driven crime and population formula, States, local governments, and tribes cannot request more than the total amount available in any fiscal year. Because of this, it is not possible to determine what the unmet need was in fiscal year 2011 under the JAG program. In fiscal year 2011, there were a total of 56 States and territories and 1,348 local jurisdictions eligible for JAG funds, with a total of \$365.9 million available in prescribed amounts. Of the local governments eligible for a direct JAG award, all but 127 applied for their funding allocation. Of the 127 that did not apply for their eligible funding, 120 of these jurisdictions would have received an award of between \$10,000 and \$25,000. As a result of these failures to apply, \$1,949,103 in Byrne JAG funding was not awarded in fiscal year 2011.

However, in fiscal year 2011, Office of Justice Programs' (OJP) Bureau of Justice Assistance (BJA) released 63 funding solicitations and received 4,295 funding applications requesting a total of \$3,793,937,608 in Federal funding from BJA. BJA had sufficient appropriations to meet 19.32 percent of this requested total, funding 51.66 percent of all applications submitted. These figures do not include unmet demand from programs such as the State Criminal Alien Apprehension Program and the Bulletproof Vest Partnership, which had additional unmet funding requests.

DUPLICATION OF SERVICES

Improving the effectiveness and efficiency of Federal programs is a critical priority of the administration and the Department. The Department is committed to continuing efforts to prevent unnecessary duplication, streamline through approaches such as the consolidation of grant programs, and identify effective programs using evidence-based methods.

Department of Justice (DOJ) grantmaking agencies closely collaborate on the development and implementation of grant programs to avoid the types of potential problems cited by the Government Accountability Office (GAO). Managers from OJP and its bureaus, COPS office, and the Office of Violence Against Women (OVW) often meet to coordinate programs and objectives. The following selected examples are illustrative of the Department's commitment to work collaboratively among its own components as well as Federal Government-wide to improve government performance and effectively target the public safety needs of our communities.

—In January 2011, I convened the first meeting of the Federal Interagency Re-entry Council. The council is addressing short-term and long-term goals on prisoner re-entry through enhanced communication, coordination, and collaboration across Federal agencies. OJP is leading a parallel staff-level effort, which includes 35 people from 17 different Federal agencies—including the Departments of Health and Human Services (HHS), Housing and Urban Development (HUD), Labor, Education (ED), Veterans Affairs, Agriculture, and the Social Security Administration, and others.

—OJP is also spearheading the National Forum on Youth Violence Prevention, which is an effort launched—at the direction of the White House—by DOJ and ED, to directly and locally address the needs of communities that continue to experience high levels of youth violence. Using comprehensive technical assistance, the Forum enables Federal agencies to serve as catalysts for broad-based positive change at the local level in a very efficient, cost-effective manner.

—All of DOJ's components and leaders are working together to provide the most efficient and timely information to tribal communities. As cited in the GAO report, beginning in fiscal year 2010, the Department created the Coordinated Tribal Assistance Solicitation (CTAS), which consolidates most of the Department's tribal government-specific criminal justice assistance programs administered by OJP, OVW, and COPS under one solicitation. Through CTAS, tribes can apply for funding for many of their criminal justice needs with one application.

—The Tribal Law and Order Act enacted in July, 2010, contained amendments to multiple laws with an impact across DOJ activities in Indian country, including a number of OJP programs. The CTAS collaborative experience read-

ied us for statutorily mandated coordination required for law enforcement, training, increased grants authority, and crime data analysis and reporting.

—We are also partnering with other Federal agencies to conduct inventories of Federal resources, develop interagency memorandums of agreement, and long-term comprehensive plans to improve our performance, eliminate duplication, and identify gaps to better serve tribal governments and their communities, in consultation with tribes.

—The Defending Childhood Initiative is being coordinated across OJP, COPS, OVW, the U.S. Attorneys offices, as well as other components within the Department and the Federal Government.

The Neighborhood Revitalization Initiative—which is a White House-led interagency collaboration—is executing place-based strategies to engage and support local communities in developing and obtaining the tools they need to revitalize their own neighborhoods of concentrated poverty.

The Federal Government already directs significant resources to these neighborhoods, but we can always look for additional ways to continue to support them. Better alignment of Federal programs will help local leaders to use Federal funds more effectively, making our taxpayer dollars go further.

Additionally, the Department is working as a whole to coordinate and improve our grants management efforts. There is a DOJ-wide Grants Management Challenges Workgroup, comprised of grants officials from COPS office, OJP, and OVW, that meets to share information and develop consistent practices and procedures in a wide variety of grant administration and management areas. In fiscal year 2011, the working group successfully implemented the DOJ-wide high-risk grantee designation program and a DOJ-wide, on-line financial training tool for DOJ grantees.

Through our Byrne Criminal Justice Innovation program, OJP and the Department will strengthen partnerships with HUD, ED, HHS, and the Department of the Treasury in distressed neighborhoods to implement effective strategies to address persistently high violent crime, gang activity, and illegal drugs.

As mentioned, the Department is equally committed to consolidating grant programs as appropriate. The fiscal year 2013 budget re-proposes a consolidation that was also included in the fiscal year 2012 budget but not adopted, the consolidation (Problem Solving Justice) and expansion of funding for Drug Courts and the Mentally Ill Offender Act Program. The fiscal year 2013 budget also proposes the creation of a 7-percent tribal grant set aside to address the needs of Indian country, rather than several separate programs.

As resources have become tighter, we are working smarter by promoting evidence-based approaches and developing and spreading knowledge about what works and what causes crime and delinquency. Evidence-based knowledge is critical to help policymakers at the Federal, States, and local levels know what to fund, but perhaps more importantly right now, what not to fund. For example, OJP has developed tools such as CrimeSolutions.gov and the Diagnostic Center, which help jurisdictions focus on evidence-based “smart on crime” approaches to maximize resources and improve public safety results.

Senator MIKULSKI. The second thing is: The GAO report raises issues related to duplication of services, and I’d like to have your reaction to the GAO report on how we can streamline, get more efficiencies. I think you’re already on that road.

But let me turn to Senator Hutchison.

STEVENS CASE

Senator HUTCHISON. Thank you, Madam Chairman. Mr. Attorney General, we will have questions for the record, but I wanted to pursue this public integrity unit’s misconduct against Senator Stevens.

After you moved to dismiss the case, the court appointed counsel to investigate the botched prosecution of Senator Stevens, and found that the prosecutors engaged in systematic concealment of evidence, but they were not guilty of criminal contempt. And according to the summary that was put out in the public, the full report coming later, the court said, “Despite findings of widespread, and at times, intentional misconduct, the special counsel, Mr.

Schuelke, recommended against contempt charges, because prosecutors did not disobey a clear and equivocal order by the judge, as required under law.”

Now, Judge Sullivan said, “Upon review of the docket and proceedings in the *Stevens* case, Mr. Schuelke concludes no such order existed in this case. Rather, the court accepted the repeated representations of the subject prosecutors that they were familiar with their discovery obligations, were complying with those obligations, and were proceeding in good faith.”

My question to you is: Does it concern you that the only reason these prosecutors escaped criminal charges is that the judge in the *Stevens* case didn’t file an order specifically telling the prosecutors that they should follow the law?

Attorney General HOLDER. We have to take into account a variety of things. When I was made aware of the issues that led to the inquiry that Judge Sullivan ordered, I made sure I ordered that the case be dismissed.

Senator HUTCHISON. Dismissed.

Attorney General HOLDER. I also ordered that an Office of Professional Responsibility (OPR) report be done as an internal DOJ report, which has now been completed. It is now in its final stages of being worked through.

Senator HUTCHISON. Will it be made public, Mr. Attorney General?

Attorney General HOLDER. I’m hoping that we can. There are privacy interests that we have to deal with, but my hope is to get that report, or as much of the report, made public as we possibly can. It is an exhaustive study. It is hundreds of pages long. I think the people at OPR have done a good job, and there are recommendations with regard to sanctions that ought to be made. I’m hoping that we will make that available.

Senator HUTCHISON. I’m going to request that you do.

Attorney General HOLDER. Okay. I’m not really at liberty to discuss the report that Mr. Schuelke did. We’ve gotten a limited number of those reports in the Justice Department, 10 or 15 of them, and we’re under orders by the judge not to discuss those. I’ve had a chance to review, certainly, the summary and portions of it, and some of the findings that are made there are disturbing. They were disturbing when I made the decision to dismiss the case.

We have done a lot since that time to come up with ways in which we try to prevent those kinds of mistakes from happening again. We have an extensive training program. We have hired somebody who is responsible as a coordinator to make sure that discovery is handled properly in criminal cases and civil cases that the Justice Department is involved in, so we don’t fall back into those same kinds of errors. I have spoken to members of the judiciary. All to make sure that what happened in the case involving Senator Stevens is not replicated. I would urge everybody to understand that this Justice Department, this Attorney General, when we made that determination that mistakes occurred, took the extraordinary step of dismissing that case.

Senator HUTCHISON. Which I give you full credit for.

PROSECUTORS IN *STEVENS* CASE

Now, let me ask you: Four of the six prosecutors, according to reports, who were investigated, opposed releasing the report, and their names have been redacted. I want to ask you if any of these prosecutors are still in the Justice Department system.

Attorney General HOLDER. I have to check that, just to make sure, but I believe all of the prosecutors who were involved in that case are still in the Department. I believe that's true. I'm not totally sure of that.

Senator HUTCHISON. Does that trouble you, that there would be findings of misconduct in such a sensitive area that you would not let them go outside of our justice system?

Attorney General HOLDER. It depends on the nature of the misconduct, what it is that they did, the mistakes that were made. I think one has to look at the Schuelke report that is about to be released, combined with the OPR report and the recommendations for sanctions that are contained in that OPR report, to look at what exactly should happen to these people. Was the incident an isolated one? How serious was it? What is the nature of their contribution?

Senator HUTCHISON. Are you going to do that, Mr. Attorney General? Are you going to make a decision regarding people who have clearly exhibited that they do not have the integrity to prosecute in this sensitive area? Will you tell the subcommittee what your actions are when you have made that determination?

Attorney General HOLDER. I don't think there was any Privacy Act interest that prevents us from sharing with this subcommittee what actions we have ultimately decided to take against those people who are found to have been culpable.

Senator HUTCHISON. Well, I ask that you report that to the subcommittee. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Brown.

STATEMENT OF SENATOR SHERROD BROWN

Senator BROWN. Thank you, Madam Chair, and thank you, Attorney General Holder, for your service.

RESIDENTIAL MORTGAGE-BACKED SECURITIES WORKING GROUP

You established the new RMBS Working Group. Thank you for that. I want to talk a moment about that. But, last week, Phil Angelides, from Senator Feinstein's State, former chair of the Financial Crisis Inquiry Commission, observed that the number of lawyers, some 55 lawyers, investigators, and other staff of the working group I just mentioned, that is far fewer than the 100 law enforcement professionals dedicated to the Dallas bank fraud task force during the savings and loan era.

Mr. Angelides also suggested the Congress should extend the statute of limitations for financial institutions fraud from 5 years to 10 years, as the Congress did in 1989, when it passed the Federal Institutions Reform Recovery Enforcement Act after the savings and loan crisis. And you, of course, are aware of the public sentiment of anxiety, frustration, outrage—pick your noun—toward the fact that so few people have been prosecuted.

Talk to me about the working group, the dollars you're dedicating of the \$55 million increase you're asking for. Is it going to go into the RMBS Working Group? And comment, if you would, on Mr. Angelides' recommendation that the statute of limitations, similarly 20 years ago on a, if not a similar scandal, surely a scandal, when it was lengthened to 10 years by the Congress then, if that's something we should do.

Attorney General HOLDER. I would say, first off, that this whole mortgage fraud scandal that we are dealing with is something that we have taken extremely seriously. We brought charges against about 2,100 people last year, all over the course of the last few years, in connection with the mortgage problem. You mentioned there are 55 Federal personnel to go to the RMBS task force—that's the Federal component. One of the things that I think is unique about that is that we're working with our State and local partners, and, in particular, State attorneys general. So, the number of people who will be ultimately devoted to that task force will be substantially greater than that.

I suspect we will also be adding people from various U.S. Attorneys' offices around the country. I think we're looking at four or five that will be intimately involved in this, so that number will ultimately go up. We're going to have adequate resources, in terms of the numbers of people, to do the job that we need to do with regard to the RMBS Working Group.

With regard to the extension of the statute of limitations, that is something that I'd be more than glad to discuss with the members of this subcommittee after I've had a chance to speak with the prosecutors on the ground, to see if, in fact, that is something that we need. We want to use all the tools that we have, and also consider any possibilities that we might want to acquire, so that we can hold accountable the people and institutions who really had a devastating impact on our Nation's economy, and continue to have a lingering effect on our Nation's economy and, in particular, the housing market, which drags down the recovery.

Senator BROWN. Okay. Thank you for that. And we will be following up with your office on the wisdom, hearing from your prosecutors that might be in the middle of initiating these cases or in the middle of these cases, about the importance of that extra 5 years of the statute of limitations.

OIL AND GAS PRICE FRAUD WORKING GROUP

Let me talk for a moment about gas prices. You know, oil prices are more than \$100 per barrel. The Department of Energy and the Commodity Futures Trading Commission have told us inventories of oil are sufficient. Domestic production is up. We hear that. The number of rigs has grown. The consumption is down. All reasons that gas prices should not be going up, understanding that the turmoil in the Middle East and the discussion of Iran.

Some analysts have estimated speculation may be adding 50 cents to the price per gallon of gas. It's my understanding over the last year, DOJ organized the Oil and Gas Price Fraud Working Group to determine the role speculators and potential price manipulation are having on the price of gasoline.

What have you found? What are your next steps? What can we expect?

Attorney General HOLDER. That working group continues to be in effect. In fact, they're having a call today to discuss the situation in which we find ourselves with regard to these rising gas prices. That working group, itself, will be meeting before the end of this week. The work of that group has been ongoing and looking to see if there are inappropriate manipulations of the market.

The Federal Trade Commission (FTC) is also working in this area. I don't want to speak for them, but I understand they're working on a report of some sort that we should be seeing relatively soon. That is, again, the FTC working independently of us. But within the Department, that Oil and Gas Price Fraud Working Group has been active, and as I said, has a call today and a meeting that will happen, I think, by tomorrow.

Senator BROWN. Okay. I would like to request that after the phone call, and after the meeting today or tomorrow, that task force brief me and other members of the subcommittee who have expressed interest.

Attorney General HOLDER. All right. To the extent we can, we will certainly do that.

Senator BROWN. Thank you.

Senator MIKULSKI. All right. Mr. Attorney General, we really would like to see that. This is very, very, very important.

We would now like to turn to Senator Murkowski.

STATEMENT OF SENATOR LISA MURKOWSKI

Senator MURKOWSKI. Thank you, Madam Chairman, and Mr. Attorney General. Welcome this morning.

STEVENS CASE

I want to follow onto Senator Hutchison's questions regarding the prosecution of Senator Ted Stevens. I think so many of us were absolutely shocked. I was horrified, as a friend, and as an Alaskan, to read Judge Sullivan's comments that this ill-gotten verdict not only resulted in the loss of Senator Stevens losing his seat, but in his words, tipped the balance of power in the U.S. Senate. Pretty powerful, in terms of what DOJ did to a great man.

I appreciate, and I recognize, and I thank you for your actions in dismissing that case, and in your decision to not attempt to retry, and I join Senator Hutchison with that. But, there are questions that still remain. You know that. I have a long series of them, and what I would like to do is submit them to you today, and ask that you respond to them prior to the release of the report, which is due to come out next Wednesday, the 15th of March. So, I would appreciate your attention to that.

ATTORNEY'S FEES FOR PROSECUTORS IN STEVENS CASE

I have a question regarding what is happening now with the release of this report. The USA Today reported that DOJ has spent \$1.8 million in defending prosecutors from allegations that they broke the law in the *Stevens* prosecution. And Senator Grassley was one who mentioned that it seems like this is an unseemingly

high amount of money being spent by the taxpayers to defend what appears to be egregious misconduct. And, again, Senator Hutchison has noted the words that Judge Sullivan used in his order, saying that the report demonstrated significant widespread, and at times, intentional misconduct by the prosecutors.

Now, I understand that the \$1.8 million went for attorney's fees to defend the actions of the Justice Department prosecutors who were under investigation for contempt by the counsel appointed by Judge Sullivan. The report of that counsel, again, is due to be released on the 15th. In addition to spending taxpayer money to defend your attorneys, did the taxpayers also pay for the attorneys to argue that the contents of this report should not be publicly released? You have stated that this is a matter that has risen to a level of public attention. So, if you can answer that question for me, and also whether the Justice Department supports the merits of the appeal that has been raised by Mr. Edward Sullivan, who is one of the prosecutors who has asked the U.S. Court of Appeals for an emergency stay to prevent the release of this report next week.

So, the question is whether you support the merits of that appeal, and, again, whether or not the taxpayers are on the hook to pay for his attorneys to argue that this report should be kept from the public.

Attorney General HOLDER. I don't think we take any position with regard to what he has said about his desire to keep the report sealed. The Justice Department has indicated that we do not object to the release of the report. I think that given the issues that we found there, the magnitude of the case, and, frankly, the magnitude of the errors that led me to decide to dismiss the case, that there is a legitimate public interest in knowing as much as we can about what happened, why it happened, what steps the Justice Department has taken in connection with these findings of misconduct.

Senator MURKOWSKI. So is the Justice Department paying for his attorneys' fees in this matter, to keep this from being made public?

Attorney General HOLDER. I don't know about him, specifically, but I do know that as a result of the charges that were brought against them, the determination was made that there would be a conflict of interest for the Justice Department to defend them, which would be typically how we would do it, and they were, therefore, allowed to get outside counsel. Under the regulations, the Justice Department then pays for those legal representations, which has happened in a variety of cases, a variety of circumstances, former attorneys general and lawyers who have been reimbursed by the Government. I'm hoping I won't have to do that, but other attorneys general have done that.

Senator MURKOWSKI. So, even now that the independent counsel that Judge Sullivan had appointed, even though that counsel has found that members of the *Stevens* prosecution had engaged in significant, widespread and, at times, intentional, and again, intentional misconduct, does the Government have any recourse to recover the funds that have been paid for their attorneys' fees, when they have engaged in intentional misconduct?

Now, you mentioned in your comments to Senator Hutchison that after the OPR report, that there may be sanctions that we will see, but is there recourse? Are you pursuing any recourse? It seems to me that in an instance like this, where it has been made clear that the conduct was intentional, that it was substantial, and it was widespread, that we should not be defending and paying for the attorneys' fees to again allow these individuals to conduct such acts, and then to learn that they're still within DOJ doesn't give me much confidence.

Attorney General HOLDER. Certainly, one of the things that happens is that because the Justice Department can't represent these people, and they have their own views of what happened, they want to be able to explain, with counsel, defend themselves. That is why the expenditure of money actually occurred. That is why they are allowed to get outside counsel. As I said, that has happened, not frequently, but it certainly happened in the past, and we acted with regard to them as we have done in the past with regard to the retention of outside counsel.

Senator MURKOWSKI. I would think that \$1.8 million to go to defend these attorneys, who have engaged in intentional misconduct, is just stunning to me. I'd like to think that there could be some recourse.

Madam Chairman, I'm well over my time. I thank you for your indulgence.

Senator MIKULSKI. It was important that you had the opportunity to completely pursue your line of questioning. The situation that has been presented by you and Senator Hutchison, reminding the subcommittee, is deeply troubling. We must have public integrity. We also must have an independent judiciary. We have to have, regardless of which party is in the White House, a Justice Department that we believe in, and that the American people believe in. So, I know the Attorney General will be responsive, and then we'll take it from there.

Senator MURKOWSKI. Madam Chairman, I just want to thank you for those comments, and agree wholeheartedly. And I do think the Attorney General took a major first step, when he dismissed the case. That was huge. But, now we must followup, so that there is no question that the people who did this, and the report will show whatever it shows, that they're not able to prosecute ever again. Ever.

Senator MIKULSKI. Thank you.

Senator MURKOWSKI. Thank you.

Senator MIKULSKI. Senator Pryor.

STATEMENT OF SENATOR MARK PRYOR

Senator PRYOR. Thank you, Madam Chair, and Attorney General, welcome to the subcommittee. Thank you for being here.

PRISON OVERCROWDING

I want to add my voice to something that was said earlier about prison overcrowding. And I could go through the facts and figures on that, but you know those better than any of us do. It is just a real concern.

One of the prisons that's on the short list is actually in Arkansas, and back in fiscal year 2010, it was scheduled to be funded in fiscal year 2014. Well, now, it keeps getting pushed back. Now, it's fiscal year 2018. So, it's an example of us not being able to fund some of the real needs that we have. I know I'm not alone in that. So, I want to voice my concern there.

SEQUESTRATION

Let me ask about sequestration. I don't believe anyone's had a chance to ask about sequestration. And I'm curious about what the Justice Department perceives will happen to DOJ funding if sequestration does, in fact, take place, and what steps you're taking to address that.

Attorney General HOLDER. I certainly hope that's something that we don't have to face. As I look at it, we'd be looking at an across-the-board cut of about 7.8 percent, which would mean a cut of about \$2.1 billion. No Justice component would be exempt from those cuts. And from an operational perspective, we would have to cut personnel funding and nonpersonnel funding.

We are estimating that we'd have to furlough all position types, including agents, Federal agents, FBI agents, DEA agents, ATF agents, and attorneys, who try cases, investigate cases, for an average of about 25 days. We would have to lose permanently a pretty substantial number of jobs. This across-the-board cut would have a devastating impact on the Justice Department's ability to protect the American people, to do investigations. It would be something that would just simply be devastating. My hope would be that the Congress will find a way to avoid this sequestration, which, just from my own parochial interests, which I think actually are the Nation's as well, to really avoid the very negative consequences that could have a permanent impact on our well-being.

Senator PRYOR. And so, you've mentioned these furloughs, but I assume, also, you'd have to suspend the funding of many of your programs that help local and State law enforcement agencies.

Attorney General HOLDER. That's an excellent point. The consequences are not restricted to simply what happens to the Justice Department here in Washington and in our field offices. Our ability to be good State and local partners would certainly be impacted by the reduced amounts of money that we'd be able to share with our State and local partners, in terms of grants, Cops on the Beat. It would be a devastating thing for this to happen.

THE JOHN R. JUSTICE PROGRAM

Senator PRYOR. And let me ask about personnel in a little different context. The John R. Justice Program has about 1,600 prosecutors and about 1,200 public defenders in the last fiscal year that received assistance under that program, to help them pay off their student loans, et cetera. But, this budget, as I understand it, does not have funding for that program this year. So, my concern there would be that we want the best and the brightest out there trying cases on both sides. Again, this is public defenders and prosecutors. And in our criminal justice system, it's critical that we have good representation on both sides. And I'm afraid that we're going to lose a lot of talent if we don't have a program like this. Do you

share that concern, and what steps you think we can take to keep the best and the brightest coming on board?

Attorney General HOLDER. I do share that concern. We want the best and the brightest to come and take what are low-paying jobs on the prosecution side, on the defense side. These kids come out of law school with enormous amounts of debt. And I don't want them to make career choices based on how they're going to repay those loans, as opposed to following their passions, and taking their great skills to become members of the Justice Department, State and local prosecutors offices, or on the other side, to be good defense attorneys. And that is one of the things that I'm concerned about.

We have a tough budget, and you're right, the money is not there, to the extent that it was in the past. To the extent that we can work on ways in which we come up with creative things to do to make sure that those career decisions, especially those first job career decisions, by people coming out of law school, are not a function of their financial concerns, but really is a function of how they want to help build a better society.

Senator PRYOR. Thank you.

CYBERSECURITY

And Madam Chair, I don't really have time to ask another question, but I would like to just make an observation. The chair of the subcommittee here yesterday took a leadership role in a cybersecurity exercise in a classified setting, and we appreciate her leadership in getting all of us to go and participate. It was very informative, very interesting. And I know that DOJ has been very involved in what's going on with Federal Government cybersecurity issues, and all the task forces and everything you're working on. But, I also hope that you will not neglect the private sector, as well as the State and local governments, because they have a role to play in this as well.

Attorney General HOLDER. That's exactly right. This is not something that the Federal Government can handle by itself. This is a national security issue, certainly, but it's also an infrastructure issue which involves our State and local partners. Then one looks at just the amount of theft that occurs, intellectual property theft, in particular, so that the private sector has to be involved as well.

We have to come up with mechanisms, means by which all of those various components talk to one another, if we ultimately want to be successful in what I think is the most pressing thing that we're going to be facing in the coming years.

Senator PRYOR. Thank you. Thank you.

Senator MIKULSKI. Thank you, Mr. Attorney General. I want to go back to the excellent question Senator Pryor raised about the impact of sequester. Could we have that answer in more detail, in writing, so that everybody would have a chance to study it, and go over it in programs and so we can really grasp the full consequences?

Attorney General HOLDER. Yes.

[The information follows:]

IMPACT OF SEQUESTRATION

The Department of Justice's (DOJ) supports the fiscal year 2013 President's budget request, which would avoid a sequestration, if enacted as proposed. Therefore, I am not describing the impact of a potential sequester, which the administration is committed to avoiding. However, I can describe the impact of an across-the-board cut of 7.8 percent, or more than \$2.1 billion, to DOJ's budget authority. To implement this cut, DOJ would have to cut both personnel and operational funding. Personnel cuts would require DOJ to implement a hard hiring freeze, which would mean losing 4,800 positions, and furloughing all DOJ employees for 25 days. These personnel cuts, along with significant operational cuts, would mean reductions in the apprehension of violent fugitives, fewer Federal Bureau of Investigation (FBI) national security investigations, fewer affirmative litigation efforts, and more crowded prisons. For context, a 7.8-percent cut would mean that the Bureau of Prisons would be cut by \$510 million, FBI by \$730 million, the Drug Enforcement Administration by \$175 million, the U.S. Marshals Service by \$90 million, and the U.S. attorneys office by \$150 million.

Senator MIKULSKI. I'd now like to turn to Senator Graham.

STATEMENT OF SENATOR LINDSEY GRAHAM

Senator GRAHAM. Thank you, Madam Chairman. I'd like to add my voice to what you just echoed, and Senator Pryor, that sequestration, as it's set up, would devastate DOJ, our ability to defend ourselves, and destroy the military, and surely we can find a better way to do it than that. So, I think you're dead on. This is just an ill-conceived idea of cutting money blindly, in my view.

Now, you were in South Carolina couple days ago, is that right, Mr. Attorney General?

Attorney General HOLDER. It was yesterday.

Senator GRAHAM. Yesterday. Well, we're glad to have you. Hope you spent money while you were there.

Mr. HOLDER. I did.

NATIONAL ADVOCACY CENTER

Senator GRAHAM. But, the National Advocacy Center (NAC), in Columbia, that you visited, what would you tell the subcommittee about the NAC, in terms of being a value to the Nation?

Attorney General HOLDER. It is an invaluable resource for us.

Senator GRAHAM. Did you all hear that?

Okay. I'm sorry. Go ahead.

Attorney General HOLDER. No. I mean it is. It is an invaluable resource for the training that goes on in the Justice Department. It is one that I think could actually be expanded. I'm concerned that we're not interacting with our State and local partners to the extent that we once did in doing training with them. We're trying to bring into the NAC people from the defense side as well. It's where people learn to be good trial lawyers, learn a variety of skills, learn their ethical obligations. It's an invaluable resource.

Senator GRAHAM. Well, we appreciate your visit, and it will be a place where, you know, cybersecurity is probably the issue of the 21st century, and whether it's a crime, an act of war, it depends, I guess, who's involved, but a lot of local law enforcement folks probably have no idea how to handle this, and it would be a good way to kind of educate the country as a whole. And the collaboration between the University of South Carolina and the NAC, I appreciate.

And I want the subcommittee to know that we took about 200 or 300 DOJ jobs out of Washington, because after 9/11, we were worried about having every part of our Government in one city. And we moved those folks down to South Carolina, in Columbia, and you leased a building from the university. It saved about \$35 million. So, I just want to applaud you for trying to be creative to decentralize DOJ, so that in case we're ever attacked here, we don't lose all of our national assets, and it was a way to save money.

Attorney General HOLDER. And we also have that relationship with the university about the rule-of-law component as well. And I think that's been a good synergy.

Senator GRAHAM. To my colleagues, and I've been to Afghanistan and Iraq, like many of you, and we're trying to develop a rule-of-law program in Iraq, Afghanistan, Africa—you name it. Without some basic rule of law, no country can develop. And all the lessons we've learned the hard way, from making mistakes, but finally getting it right in many ways, we're trying to create a center at the University of South Carolina, where those who have been overseas can share their thoughts about what worked, what didn't. You could train before you went. DOJ, Department of Agriculture, and the Department of Defense, this is a team.

This war requires a team concept. And we're trying to reach out to the Islamic world and create partnerships with lawyers, and attorneys general, and judges in the Islamic world, so we can understand them better, and they can understand us. And I'm excited about it, and I appreciate your support.

REVAMPING THE FEDERAL CRIMINAL CODE

Now, Justice Scalia came out yesterday, or the day before, talking about, he thought it would be wise if we looked at our Federal criminal code, particularly in the drug area, to see if we could reform it. And I think he's right. I think we've Federalized way too many crimes, creating work for our judiciary that could probably be handled better at the State level. What do you think about the idea of revamping the Federal criminal code, and looking at maybe undoing some of the over-Federalization?

Attorney General HOLDER. When I came into office, I set in place a number of working groups to look at that issue. Are we bringing the right people into the Federal system? Are the sentences that we have for the crimes that are Federal ones appropriate?

Senator GRAHAM. Like crack cocaine. We finally fixed that, but that was just sort of an indefensible sentencing disparity.

Attorney General HOLDER. Right. I think the bipartisan effort that resulted in the lowering of that ratio from 100 to about 16 to 1 was something that was long overdue, and was a great example. People don't focus on it, but it was an example of Republicans and Democrats getting together and doing the right thing, not only for the system, but it was something that I think was morally right as well.

RECESS APPOINTMENTS

Senator GRAHAM. And an area where we may disagree, we'll talk about the law of war later, we don't have time here, but the recess appointments made by President Obama a while back to the Na-

tional Labor Relations Board, is there a situation similar to that in the history of the Senate, or by a previous President, of appointing someone to a Federal agency under those circumstances, that you're aware of?

Attorney General HOLDER. If you look at the 23-page report by the Office of Legal Counsel (OLC), they go through a variety of precedents. They look at the laws that exist, tradition, and the conclusion that they reached was that given the length of the recess, 20 days, or so, that the appointments were, in fact, appropriate. This is obviously something that the courts are going to ultimately decide, but I think that the OLC opinion was accurately described.

Senator GRAHAM. I think Senator Alexander will have a discussion with you about that, but I take a different view. But, I'll let him discuss that with you.

MILITARY COMMISSIONS

And finally, just to note, I think, maybe it was last week, we had a plea bargain with a military commission detainee who was one of the Khalid Sheikh Mohammed close confidantes. And I know Mark Martins is the chief prosecutor, and you've got a good defense team down there. I do support Article III courts for terrorism trials, when appropriate. But, I just want to acknowledge your support for military commissions in appropriate circumstances, and with your help, I think we've got these things up and running, and I look forward to more action coming out of Guantánamo Bay to get some of these people through the legal system. So, thank you for that support. And to all those at Guantánamo Bay doing your job, you're doing the country a great service, particularly the defense counsels.

Attorney General HOLDER. I think that's right. I think that people should understand that the revised commissions that exist, as I said in my speech at Northwestern, have many of the elements of due process that we consider vital to the American system. I think we have great defense lawyers down there.

The military system doesn't get the credit that it deserves for the fair way in which it deals with people, and under the direction of Mark Martins, who's a person I've known for some time, I think we'll be proud of the work they do.

Senator MIKULSKI. Thank you very much, Mr. Attorney General.

We're now going to turn to Senator Feinstein. Before Senator Pryor leaves, I thank you and others for mentioning the cyber exercise yesterday, and all who participated. Next week, we're going to hear from the FBI, and we're going to do an open hearing, and then we're going to do a classified hearing. This will be an opportunity to ask many of your cyber questions and go into the level of detail I think the subcommittee would like. So, thank you.

Senator Feinstein.

STATEMENT OF SENATOR DIANNE FEINSTEIN

Senator FEINSTEIN. Thanks very much, Madam Chairman, and welcome, General.

I want to associate myself with the comments of Senator Murkowski and Senator Hutchison. To me, the tragedy is that Senator Ted Stevens died before he knew this was a faulty prosecution. And

that, to me, elevates this to a new height. And so, I think this investigation is really important. And I think that actions have to be taken. And I just wanted to express that.

OIL SPECULATION

I wanted to followup on Senator Brown's comment. It's my understanding that there's more oil available in the United States than demand calls for. And as a matter of fact, surplus is being sold outside. This, I think, would bring to special attention the issue of speculation. And I hope the study that you're doing is going to take a good look at the financial marketplace, with regard to its ability to impact price in this way.

Attorney General HOLDER. The Oil and Gas Price Fraud Working Group that we formed last year as part of the President's Financial Fraud Enforcement Taskforce has been meeting. It just happens that they are having a call today, and a meeting, I think either tomorrow or on Monday. The full committee will be getting together to look at the issues that you've raised and the issues that Senator Pryor raised.

Senator FEINSTEIN. Good. Thank you.

FOREIGN INTELLIGENCE SURVEILLANCE ACT

As you know, title 7 of the Foreign Intelligence Surveillance Act (FISA) expires at the end of the year. This allows for electronic surveillance of targets outside the United States. Senator Mikulski and I both serve on the Senate Intelligence Committee, and we've done extensive oversight of the Government's use of these surveillance authorities, and look forward to working with you to make sure Congress can reauthorize title 7 well before the end of 2012. We need to maintain the collection of critical foreign intelligence and provide certainty to intelligence professionals in that regard.

For members of this subcommittee that don't follow this issue closely, could you explain the need to reauthorize title 7 of FISA and the efforts taken to protect the civil liberties and privacy of Americans, as this title is carried out.

Attorney General HOLDER. The surveillance authorities that are in the FISA Amendments Act are absolutely critical to our national security. On a day-to-day basis, I authorize FISAs, the head of the National Security Division does, sometimes the Deputy Attorney General. It is a critical tool that we have in keeping the American people safe. The administration strongly supports the reauthorization, and as you indicated, hopes that it occurs well before the end of the year, so that the certainty that is needed by the men and women who are in our intelligence community will have some degree of assuredness that those tools will remain there, and that our fight against those who would do harm to the United States can continue.

NATIONAL SECURITY

Senator FEINSTEIN. Thank you. I also want to thank you for your enormous help and the help of FBI with respect to national security. FBI now has thousands of agents and analysts located around

the United States, essentially doing intelligence work. So, that transition has been effectively made.

Director Mueller, at a worldwide threat hearing, indicated to us that in the past year there have been 20 arrests in the United States of people in this country planning or participating in attempted terrorist attacks. And as you mentioned in your recent testimony, Umar Farouk Abdulmutallab was recently sentenced to life in prison.

Now, I also want to say that even though its specific activities are classified, in your written testimony, you mention the High-Value Detainee Interrogation Group, or the HIG, as we call it. I can say that we've seen the excellent intelligence the HIG is producing. And earlier this week, also, four principle members of hacking groups, Anonymous and LulzSec, were charged with computer hacking, and a fifth member pled guilty.

NATIONAL SECURITY FUNDING

Now, to my question. It's two-fold. I think we have to begin to look for redundancy and duplication of effort. We now have a counterterrorism center. We now have Homeland Security with intelligence, and we also now have FBI. And so I hope you will take a look at that, because the dollars are precious, and we're already experiencing cuts in the intelligence budget.

So, here's my question. What are, in the national security area, your budget reductions? What will that mean for counterterrorism, and are there any gaps in our efforts?

Attorney General HOLDER. We have adequate amounts of money contained in the budget that we have requested. If you look at the amount of money that has gone to FBI in the national security sphere, since 2001 we've had about a 300-percent increase for the Justice Department. For FBI, it might have been about 400 percent. So, it's a very substantial increase over the course of the last 10 years or so. Even with the flat budget that we essentially have for the Justice Department and its components, including FBI, we have adequate amounts of money to keep the American people safe.

I will tell you that to the extent that I feel that it is not the case, my voice will be heard. We have no greater responsibility than keeping the American people safe.

Senator FEINSTEIN. Good. Thank you very much. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Feinstein, we look forward to working with you on that part of it.

Senator Alexander.

STATEMENT OF SENATOR LAMAR ALEXANDER

Senator ALEXANDER. Thanks, Madam Chairman, and General Holder, welcome. It's good to see you. I was thinking about a conversation we had during your confirmation about Griffin Bell, for whom you worked, and I know you admired him, and I certainly admired him. I was a law clerk on a court when he was judge. And one of the things he used to say and which I've heard you say, I think, too, is that the attorney general is the lawyer for the United States, not just the lawyer for the President.

RECESS APPOINTMENTS

So, in following up with Senator Graham's comment on the so-called recess appointments, I wanted to ask you a question. As the lawyer for the United States, if the President calls you up and said, "General Holder, I notice that the Senate's gone into recess for lunch. I've got a Supreme Court nominee I want to appoint. Can we put him on the court without their advice and consent?" what would your answer be?

Attorney General HOLDER. Going to lunch? That would not be a sufficient recess.

Senator ALEXANDER. Well, what if he said they're going to recess for lunch and for dinner, and they won't be back until tomorrow? Would that be a sufficient recess?

Attorney General HOLDER. What we're getting at, if you look at that OLC opinion, they would—

Senator ALEXANDER. I'm asking your opinion, Mr. Attorney General.

Attorney General HOLDER. Well, I associate myself with that OLC opinion.

Senator ALEXANDER. Does that mean you agree with it?

Attorney General HOLDER. With the OLC opinion?

Senator ALEXANDER. Yes.

Attorney General HOLDER. Yes.

Senator ALEXANDER. You do agree with it.

Attorney General HOLDER. Yes.

Senator ALEXANDER. Then that means that the President, not the Senate, can decide when it's in session for purposes of advice and consent.

Attorney General HOLDER. Well, one has to look at the reality, the totality of the circumstances, in determining whether or not the Senate is actually in session, as that term has historically been used, and the determination made by OLC was that given the—

Senator ALEXANDER. Well, if we look at that, Mr. President, was your deputy solicitor wrong when he told the Supreme Court in a letter 2 years ago that the Senate may act to foreclose recess appointments by declining to recess for more than 2 or 3 days at a time? And was Senator Reid wrong in 2007 when he really devised the plan for pro forma 3-day sessions, because he said he heard that President Bush was about to make recess appointments. And Senator Reid said on November 16, 2007, "With the Thanksgiving break looming, the administration has informed me they want to make several recess appointments. As a result, I'm keeping the Senate in pro forma to prevent recess appointments until we get back on track." And the next year he said, "We don't need to vote on recess. We'll just be in pro forma session. We'll tell the House to do the same thing." President Bush didn't like it, but he respected it.

So, are you saying that the President, not the Senate, can decide when it's in session for purposes of a recess appointment?

Attorney General HOLDER. What we have to do and what we have done in this OLC opinion is look at history, look at precedent, look at the law, use some common sense when it comes to the approach of whether or not the Senate is actually in session.

Senator ALEXANDER. Well, was Senator Reid wrong?

Attorney General HOLDER. The determination that we made here was that with regard to that 20 days in which those pro forma sessions were occurring, that those were, in fact——

Senator ALEXANDER. But the Senate had decided it was in a 3-day session, according to the Reid formula. So, was Reid wrong about that?

Attorney General HOLDER. I'd have to look at exactly what occurred during that 3-day period, but given the facts that were presented to OLC in this instance, I think the determination that they made was correct.

Senator ALEXANDER. So, I don't see why the President couldn't look at the Senate and say, "I'm going to send up a Supreme Court justice, and I'm going to skip advice and consent." I'm astonished by this, really. And I would think Democratic as well as Republican Senators would honor the Reid formula that President Bush honored. The Senate did the very same thing in January, and the President, nevertheless, made four appointments during the time when constitutionally he shouldn't have, according to all the precedent that I've seen.

Attorney General HOLDER. The only thing I'd correct is that the determination was not made by the President. The determination was made by OLC, we then shared that opinion with the President, and the President made the decision as to what he wanted to do.

Senator ALEXANDER. He made the decision not to respect the Senate's decision about when it's in session or when it's not, which, to me, is a blatant lack of regard for the constitutional checks and balances, and something that we ought to avoid.

METHAMPHETAMINE LABS

May I ask quickly a question? Last year, the Department found money to support the work against methamphetamine, and I compliment the Department for that. I know it's getting increasingly harder. In our State, we had the highest number of meth lab seizures in the Nation. The money's running down. The State's increasing its funding. Will the Department again be able to try to help States that are working on this, as you were able to do last year?

Attorney General HOLDER. We are certainly going to try to, as best we can. I know one of the things that we have seen with regard to the cleanup of meth sites is that there have been a number of these container activities. I think this is right, that Tennessee is actually a leader in that effort.

Senator ALEXANDER. Yes.

Attorney General HOLDER. There have been a number of States that have come up with things, and instead of it costing, I don't know, \$3,000, \$4,000, \$5,000 to do that, it actually comes down to \$200 or \$300. The experience that we have seen there is something that we have to extrapolate and use in other parts of the country as well.

Senator ALEXANDER. Thank you, General Holder. Thank you, Madam Chairman.

Senator MIKULSKI. Senator Lautenberg.

Senator LAUTENBERG. No. I think——

Senator MIKULSKI. Oh. I'm sorry. Wait. Wait. It's a little rock-and-roll in here today. First of all, Senator Leahy, the chair of the Judiciary Committee, excuse me, and then Senator Lautenberg.

STATEMENT OF SENATOR PATRICK J. LEAHY

Senator LEAHY. Thank you, Madam Chair.

RECESS APPOINTMENT

Attorney General Holder, good to have you here. If I could just follow-up a little bit on what my good friend from Tennessee, Senator Alexander, said on the recess appointments. There is an easy way out of all of this. It requires a little cooperation on both sides. And I suggested this in the Judiciary Committee, that the President resubmit the nominations, and the Republicans agree to have an up or down vote, say, within 1 week or 2 weeks. The President did this, because even though everyone knew there were more than 50 votes, which is normally what it takes to confirm somebody, available, my friends on the other side of the aisle were blocking having a vote.

I understand the President's frustration, but I think the easy way out of this is simply if the Republican leadership would agree to an up or down vote, say, within 1 week or 2 weeks, whatever amount of time needed for it to be, and resubmit them and have the up or down vote. That takes care of all the problem. I just would suggest that as an easy way out. It's not as much fun on the talk shows, but it helps the Government.

GRANT PROGRAM DUPLICATION

Mr. Attorney General, your Department administers many crucial grant programs that help victims and law enforcement, including ones that I've been very heavily involved with, the Violence Against Women Act programs. And as you know, Senator Crapo and I have a reauthorization bill on the COPS grants and the bulletproof vest partnership program. GAO has said there's duplications and inefficiencies in some of the grant programs.

Will your Department work to make sure if there are any duplications that they be removed? Because these are good programs, but there's only so much money to go around.

Attorney General HOLDER. That's exactly the problem that we have. There's limited amounts of money to go around, and we have to make sure that there's not duplication. Managers from OJP, from COPS, OVW regularly meet to coordinate their programs, their activities. I think that one thing that people should not assume is that because, for example, you see the word "victim" in a number of the things that we do in the Department, that necessarily means that we're duplicating efforts there. They have very distinct responsibilities. We are working to make sure that the money that we have is being used in an efficient and appropriate way.

BULLETPROOF VESTS

Senator LEAHY. One of the things I'm very proud of for my time here in the Senate is a bill that I wrote with then-Senator Ben

Nighthorse Campbell on bulletproof vests, so much so, that I walked down the street in Denver, Colorado, 1 year or so ago, a police officer came up, asked if I am who I am. And I said, "Yes, I am Senator Leahy." He just tapped his chest and said, "Thank you."

But, we've been told by GAO that there's some funds that have not been obligated on the bulletproof vest partnership grant program. Law enforcement—especially in the smaller communities, where they do not have the budget to buy the bulletproof vests, which are \$500, \$600—need these funds. Can you check to make sure these funds are obligated as quickly as possible?

Attorney General HOLDER. Yes. To the extent that funds were not drawn down, we are taking steps to allow jurisdictions to use that unused funding, and have the time period with which they could drawdown extended, so that we can get these bulletproof vests out to these officers.

Senator LEAHY. And I would reiterate what I had told you when we chatted earlier this week, when I was in Vermont, about your speech earlier this week in guiding drones and targeting of U.S. citizens, I still want to see the OLC memorandum, and I would urge you to keep working on that. I realize it's a matter of some debate within the administration.

Attorney General HOLDER. That would be true.

Senator LEAHY. And please keep my staff and me updated on the progress of the review of the NYPD surveillance of Muslim Americans.

Attorney General HOLDER. We will.

SAME-SEX IMMIGRATION PETITIONS

Senator LEAHY. And last, I wrote to you and the Secretary of Homeland Security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance, in light of the administration's decision to no longer defend the constitutionality of the Defense of Marriage Act. I heard it may be granting individual cases. I hope you will reconsider the administration's position.

We have a case I've written to you about, Frances Herbert and Takako Uedo, who are married in Vermont lawfully. We have a number of States where same sex marriages are legal, but then they run up against the immigration problem. So, please review that.

Attorney General HOLDER. Okay. I will look at that case, and we'll get back to you, Senator.

Senator LEAHY. Thank you. Thank you, Madam Chair.

Senator MIKULSKI. Those were excellent points, Senator Leahy, and thank you very much.

Senator Lautenberg.

STATEMENT OF SENATOR FRANK R. LAUTENBERG

Senator LAUTENBERG. Thanks very much, Madam Chairman, and welcome, Attorney General Holder. The job doesn't seem to be getting easier, and I'm not blaming you. I'm just sympathizing in some ways.

Attorney General HOLDER. It's a good observation.

VIOLENT CRIME

Senator LAUTENBERG. Not so much that I won't ask for more, because we're doing with less, and we see it in my State of New Jersey, 246 gun murders in 2010; 12 percent more than the previous year. We've had layoffs galore from cities that can't afford to maintain their police force structure. So, when I look at the things that we're doing, I worry about what it is that we can do from your Department and from others. What can we do to help these communities? State budget cuts have caused Newark, Camden, and other cities in New Jersey to cut their police forces at alarming rates; one-third of the police force in Camden, more than 100 terminations of police officers in Newark.

In December, I wrote asking if you could provide Federal resources to assist our ailing cities, and I am pleased, Mr. Attorney General, to see an increase in the budget for COPS grants. Is DOJ planning other steps that we can use to help protect New Jerseyans from violent crime?

Attorney General HOLDER. We're certainly making sure that in terms of COPS grants we do the best that we can there. We have a substantial amount of money in the budget. I spoke to the mayor of Camden. I was at a reception and I saw her. We have certainly, with regard to Camden, in 2011 made available monies to hire 14 officers, \$3.79 million; 2010, 19 officers, \$4.2 million. We'll be looking at that kind of unique situation again this year. We certainly are putting into New Jersey, and in other places, task forces, so that the DEA, the ATF, the FBI are helping to the extent that we can, as well.

There are a variety of ways in which the Federal Government can help, given the economic situation that many cities around the country are facing. We want to be good partners in that way. Camden is a place that deserves special attention, given the unique problem that we see there.

Senator LAUTENBERG. Can I ask your view on whether or not you think we're doing enough between your Department, the FBI, our State and local police people? Are we doing enough, based on what we see with the statistics? Do you think that we're doing enough to say honestly that we're protecting our people appropriately?

Attorney General HOLDER. We have crime rates that are at historic lows, 40- and 50-year lows, and yet, I'm still troubled by the number of police officers, for instance, who have been killed in the line of duty in the last 2 years, where we've seen a 16-, 20-percent increase there. That is something that we have to work on.

I'm concerned about the fact that although the numbers of murders are down, 67 percent of them occur by people who are using firearms. That's an issue that we have to deal with. Too many of the wrong people have access to guns, and they use them in inappropriate ways. The targets of many of those people are law enforcement officers, who are sworn to protect us, and we have to do everything that we can to try to protect them.

HIGH-CAPACITY AMMUNITION

Senator LAUTENBERG. Well, the wrong people or wrong laws? The man who shot Congresswoman Giffords last year used a gun with

a high-capacity ammunition clip to kill 6 people, wound 13. It was only when he fired all 31 rounds in his clip that people were able to subdue him. And these high-capacity magazines were banned by the Congress until 2004. Last year, you said that you thought that reinstating this ban should be examined. What's the result of that examination?

Attorney General HOLDER. We're still in the process of working our way through that. I think there are measures that we need to take. We need to be reasonable, understanding that there is a second amendment right with regard to firearms, but even the dissent in the *Heller* case indicated that reasonable restrictions can be placed on the use of weapons. What this administration has tried to do is to come up with ways in which we are respecters of the second amendment, and yet come up with reasonable, appropriate firearms laws that will ultimately protect the American people.

Senator LAUTENBERG. Madam Chairman, your indulgence for one more question, please.

NYPD SURVEILLANCE

Over the past several years, the NYPD has been engaged in surveillance of New Jersey's communities and universities searching for those who might be accused of terror; Governor Christie and Newark Mayor Cory Booker both were apparently unaware of this large-scale investigation. How can the law enforcement agencies spy on another State's residents without notifying the authorities, the Governor, the mayor even knowing about it?

Attorney General HOLDER. I don't know. We are in the process of reviewing the letters that have come in expressing concerns about those matters. There are various components within the Justice Department that are actively looking at these matters. I talked to Governor Christie. Actually, I saw him at a reception a couple days or so ago, and he expressed to me the concerns that he had. He has now publicly expressed his concerns, as only he can. I think, at least what I've read publicly, again, just what I've read in the newspapers, is disturbing, and these are things that are under review at the Justice Department.

Senator LAUTENBERG. Thank you, General Holder. Thank you, Madam Chairman. I assume the record will be kept open.

ADDITIONAL COMMITTEE QUESTIONS

Senator MIKULSKI. The record will be kept open for questions, and we then ask the Department to respond within 30 days. Senators may submit additional questions. We ask the Department to respond within 30 days.

[The following questions were not asked at the hearing, but were submitted to the Department for response subsequent to the hearing:]

QUESTIONS SUBMITTED BY SENATOR BARBARA A. MIKULSKI

Question. The Department's request for State and local grants is \$2 billion. This is down from roughly \$3.7 billion funded for grants in fiscal year 2010.

What is the total amount of money applied for in these competitive grant programs versus the amount actually awarded to States and localities?

Answer. In fiscal year 2011, Office of Justice Programs (OJP) received a total request of more than \$7.1 billion in discretionary applications; OJP awarded more than \$850 million in discretionary funding.

In fiscal year 2011, the Office on Violence Against Women (OVW) OVW had applications totaling \$1,150,510,742; OVW awarded \$457,900,491 in grants. OVW's yearly budget requests seek funding to support four core priorities of OVW:

- preventing violence against women;
- addressing sexual assault;
- extending our programming to underserved communities; and
- restoring and protecting economic security to victims of violence.

For fiscal year 2012, \$412,500,000 was appropriated to OVW to further the Department's efforts to improve the Nation's response to domestic violence, dating violence, sexual assault, and stalking. The fiscal year 2013 overall request for the OVW totals \$412,500,000, making the fiscal year 2013 total resource request for OVW equal to the fiscal year 2012 enacted appropriation.

In fiscal year 2011, the Office of Community Oriented Policing Services (COPS) received applications totaling \$2,067,924,397. COPS awarded more than \$313 million in grants funding. The COPS office received \$243,439,595 for the COPS Hiring Program in appropriated funds for fiscal year 2011 and awarded \$243,398,709. All agencies were asked to cap their request at no more than 5 percent of their current actual sworn force strength, up to a maximum of 50 officers. However, in order to provide funding assistance to the largest number of eligible agencies, the COPS office decided to further reduce the cap from a maximum of 50 officers to 25 officers. Had this methodology not been adopted as part of the hiring program solicitation, the total amount that would have been requested would have been \$5,354,837,329. For fiscal year 2012, \$166,000,000 was appropriated for the COPS Hiring Program. The COPS office will make 2012 hiring awards later this summer. The fiscal year 2013 budget request includes \$257,087,000 for the COPS Hiring Program.

DUPLICATION IN GOVERNMENT PROGRAMS

Question. The Government Accountability Office (GAO) recently released an updated version of its 2011 report on duplicative Government programs, "Opportunities to Reduce Potential Duplication in Government Programs, Save Tax Dollars, and Enhance Revenue", as well as a new 2012 version of the report. In 2011 and 2012, GAO counted Department of Justice (DOJ) programs among those that are potentially duplicative.

Has the Attorney General conducted an assessment to better understand which State and local grant programs overlap with one another to prevent unnecessary duplication, as the GAO report recommended?

Answer. Improving the effectiveness and efficiency of Federal programs is a critical priority of the administration and the Department. The Department is committed to continuing efforts to prevent unnecessary duplication, identifying overlaps in programs, and streamlining where it would ensure more effective grant assistance. The Department will initiate an assessment to better understand the extent to which Department grant programs may overlap and identify ways to mitigate the risks for unnecessary duplication. This assessment will be conducted by OJP's Office of Audit, Assessment, and Management.

Question. Has Department staff reviewed the report and conducted the analysis of grants recommended by GAO?

Answer. The Department appreciates the work of GAO and has carefully considered the findings and recommendations presented in GAO's report. The Department agrees that preventing unnecessary duplication in Government programs is a critical priority. The Department's grant agencies have significantly improved collaboration and information-sharing to mitigate the risk of duplicative Federal spending. The DOJ grantmaking agencies closely collaborate on the development and implementation of grant programs and share information with each other to improve coordination prior to making awards. The Department components will continue to coordinate with one another to ensure sound stewardship and management of its grants.

Question. What independent steps have the Justice Department taken—prior to the release of the GAO report—to identify potentially duplicative grant programs?

Answer. DOJ grantmaking agencies closely collaborate on the development and implementation of grant programs to avoid the types of potential problems cited by GAO. Managers from OJP and its bureaus, COPS, and OVW meet regularly to coordinate their programs and objectives, and they pay particular attention to those areas where they have complementary joint programs. Additionally, the executive branch annual budget process provides a multi-level review of all component bud-

ets and requires programs to be modified or deleted if overlap or duplication is identified. It is important to note, however, that overlapping activities do not necessarily signify duplication. For example, the following selected examples demonstrate the Department's commitment to work collaboratively among its own components as well as Federal Governmentwide to improve performance and effectively target the public safety needs of our communities.

- In January 2011, the first meeting of the Federal Interagency Reentry Council convened. The council addressed short-term and long-term goals on prisoner reentry through enhanced communication, coordination, and collaboration across Federal agencies.
- OJP is leading a parallel staff level effort, which includes 35 people from 17 different Federal agencies including the Departments of Health and Human Services (HHS), Housing and Urban Development (HUD), Labor (DOL), Education (ED), Veterans Affairs, Agriculture, and the Social Security Administration, and others.
- OJP is also spearheading the National Forum on Youth Violence Prevention, which is an effort launched, at the direction of the White House, by DOJ and ED, to directly and locally address the needs of communities that continue to experience high levels of youth violence. Using comprehensive technical assistance, the Forum enables Federal agencies to serve as a catalyst for broad-based positive change at the local level in a very efficient, cost-effective manner.
- For the first time, all of DOJ's components and leaders are working together to provide the most efficient and timely information to tribal communities. As cited in the GAO report, beginning in fiscal year 2010, the Department created the Coordinated Tribal Assistance Solicitation (CTAS), which coordinates the applications of most of the Department's tribal government-specific criminal justice assistance programs administered by OJP, OVW, and COPS under one solicitation. Through CTAS, tribes can apply for funding for many of their criminal justice needs with one application.
- The Tribal Law and Order Act enacted in July 2010, contained amendments to multiple laws with an impact across DOJ activities in Indian country, including a number of OJP programs. The CTAS collaborative experience readied us for statutorily mandated coordination required for law enforcement, training, increased grants authority, and crime data analysis and reporting.
- We are partnering with other Federal agencies to conduct inventories of Federal resources, develop interagency memorandums of agreement, and long-term comprehensive plans to improve our performance, eliminate duplication, and identify gaps to better serve tribal governments and their communities, in consultation with tribes.
- DOJ is an active participant in the Senior Policy Operating Group (SPOG), which coordinates Federal strategies and programs to combat human trafficking. National Institute of Justice and the State Department co-chair the SPOG Committee on Data and Research.
- The Attorney General's Defending Childhood Initiative is being coordinated across OJP, COPS, OVW, the U.S. Attorneys offices, as well as other components within the Department and the Federal Government.
- The Neighborhood Revitalization Initiative, which is a White House-led interagency collaboration, is executing place-based strategies to engage and support local communities in developing and obtaining the tools they need to revitalize their own neighborhoods of concentrated poverty.
- The Federal Government already directs significant resources to these neighborhoods, but we can always look for additional ways to continue to support them. Better alignment of Federal programs will help local leaders to use Federal funds more effectively, making our taxpayer dollars go further.
- Through our Byrne Criminal Justice Innovation program, OJP and the Department will strengthen partnerships with HUD, ED, HHS and the Treasury in distressed neighborhoods to implement effective strategies to address persistently high violent crime, gang activity, and illegal drugs.
- The COPS office is heavily invested in the White House initiative, Strong Cities Strong Communities, where it provides technical assistance to the Chester, Pennsylvania police department on issues such as crime analysis, faith-based partners, and community-based government problem-solving.
- To further advance national discussion regarding these important topics, the COPS office and OJP's Bureau of Justice Assistance have convened an Officer Safety and Wellness Group that brings together law enforcement leaders, criminal justice practitioners, Federal agencies, professional organizations, and academics to share perspectives on improving officer safety and wellness.

Additionally, the Department is working as a whole to coordinate and improve our grants management efforts. The Associate Attorney General's Office leads the DOJ-wide Grants Management Challenges Workgroup. The Workgroup is comprised of grants officials from COPS, OJP, and OVW, to share information and develop consistent practices and procedures in a wide variety of grant administration and management areas. In fiscal year 2011, the working group successfully implemented the DOJ-wide high-risk grantee designation program and a DOJ-wide, online financial training tool for DOJ grantees.

Question. Have you met with any roadblocks in the Department's attempts to eliminate or consolidate potentially duplicative programs?

Answer. The Department is committed to continuing efforts to consolidate grant programs as appropriate and use "evidence-based" approaches to identify programs that work, as well as those that do not. An example of this effort is the fiscal year 2013 President's budget proposal for the consolidation and expansion of funding for Drug Courts and the Mentally Ill Offender Act Program. A similar proposal also was included in the fiscal year 2012 President's budget, but not adopted.

In fiscal year 2012, the Congress supported the Department's budget proposal to merge several youth-oriented programs under OVW into one single program.

We are working smarter by promoting evidence-based approaches and developing and spreading knowledge about what works and what causes crime and delinquency because of limited resources. Evidence-based knowledge is critical to help policymakers at the Federal, State, and local levels know what to fund, what not to fund. For example, OJP has developed tools such as CrimeSolutions.gov and the Diagnostic Center, which help jurisdictions focus on evidence-based "smart on crime" approaches to maximize resources and improve public safety results.

Question. Does the Department think that the programs listed in the report are duplicative? Why or why not? What grant programs do the Department view as duplicative?

Answer. In its comments to the GAO on the report, the Department expressed significant concerns with GAO's methodology and identified flaws in its analysis. This flawed methodology resulted in a substantial overstatement of the number of programs that might potentially be operating in the same policy area. GAO categorized 253 solicitations into broad justice areas to identify "evidence of overlap" in justice areas. This approach is oversimplified and imprecise, resulting in a large number of solicitations in each broad category. Narrowing the justice areas would have provided for a more informative analysis of where DOJ funding is being applied. For example, the "technology and forensics" category is extraordinarily and unnecessarily expansive. Refining this justice area—such as information sharing standards development, criminal intelligence sharing, DNA backlog reduction, equipment and materials testing—would have been more informative, accurate, and less misleading.

Additionally, the GAO report identified 56 solicitations providing victim assistance, citing these as overlapping. While some might look at DOJ and see overlapping programs related to crime victims, what we actually have are programs directed at providing direct assistance and counseling to victims and their families; programs directed at training community law enforcement entities to better address the needs of victims; academic and forensic programs directed at research on victim issues; and statistical collections providing national data on the incidence of victimization and the consequences to crime victims.

GAO did not identify actual duplication; rather it cited examples of potential duplication. DOJ examined the award information of these grants and found no instance of grantees receiving funding to carry out the same activities. Although GAO acknowledges DOJ's review, the examples remain in the report to support its "findings." One example cited in the report as potential duplication involves the Office of Juvenile Justice and Delinquency Prevention and COPS grants to the Georgia Bureau of Investigation. DOJ determined that each of three grants is being used to target different issues:

- child prostitution and potential sexual slavery issues in Georgia;
- Internet crimes against children; and
- identification of sex offenders.

A second example reports that one applicant received funding under two awards from OVC and OVW to support child victim services through its child advocacy center. DOJ reviewed these grants, to the Tulipe Tribes of Washington, and determined that the tribe sought multiple funding sources because one source did not adequately cover the costs to establish the center and then carry out its activities in subsequent years.

Further, the Department was concerned with the lack of understanding that GAO showed related to the Department's "leveraging" and sustainability funding strat-

egy. GAO concluded that DOJ's granting agencies have awarded multiple grants to the same communities for the same or similar purposes. Although GAO acknowledges, "there may be times when Justice's decision to fund grantees in this manner may be warranted", the content and tone of the report wrongly infers that recipients receiving related grant funding from more than one agency is wasteful or unnecessary. Due to limited funding, DOJ encourages grantees to use multiple funding streams in a complementary manner to support local needs and implement comprehensive programs. DOJ and other agencies encourage this as a "leveraging" and sustainability strategy.

Question. What steps are the Department and the administration taking—both independently and together—to eliminate duplication, abuse, and waste in the Department's grantmaking process in response to the GAO report?

Answer. The Department has been proactive in identifying and addressing unnecessary duplication. During the program design and the annual budget formulation process, the Department carries out the following actions to avoid duplication and overlap:

- Components regularly collaborate during the budget formulation process.
- DOJ's Justice Management Division Budget Division and senior officials review all component budgets prior to their submission to the Office of Management and Budget and require programs to be modified or deleted if overlap or duplication exists.

In addition, there are systems and tools in place that can be used to ascertain if duplication of awarded funds exists. Such as:

- All three DOJ major grantmaking components (OJP, COPS, and OVW) use the same accounting system and OJP and OVW both use the Grants Management System (GMS). All GMS users can access detailed program information.
- OJP's Office of the Chief Financial Officer conducts financial monitoring of grants of all three DOJ grantmaking components (OJP, COPS, and OVW) and identifies potential areas of overlap between programs and related funding.
- DOJ grantee audits (both single audits and Office of Inspector General grant audits) represent an independent examination of funding at the grantee level. Single audits, which are mandatory for grant recipients who expend more than \$500,000 in Federal funds during a fiscal year, provide the auditors with an opportunity to examine funding and related expenditures for all grant programs. As it relates to existing program areas that cross components:
- OJP, COPS, and OVW regularly collaborate with other DOJ components in areas where programs overlap to ensure that efforts are efficient and effective. For example, the Attorney General has convened the Federal Interagency Reentry Council in which 18 Federal agencies participate.
- DOJ coordinates intra-agency working groups to develop and improve programs and reduce the possibility of duplication and overlap. For example, CTAS involves DOJ, OJP, COPS, and OVW in development of a single solicitation for all DOJ grants for tribal governments.
- OJP also leads interagency coordination groups to strategically utilize each component's strengths and minimize duplication. For example, OJP leads the National Forum on Youth Violence Prevention with strong participation from COPS, OVW, and other Federal agencies such as DOL, HUD, and ED.

For grants management activities, DOJ grant components participate in the Grants Management Challenges Working group as previously described in another section.

The Department has tackled the challenges of grants management aggressively, establishing policies, procedures, and internal controls to ensure sound stewardship, strong programmatic and financial management, and effective monitoring and oversight of its grants and grant programs. These policies and internal control framework position the Department to carry out statutory mandates and requirements and to detect and prevent potential waste, fraud, and abuse of the billions of taxpayer dollars the Department awards in grants each fiscal year.

The Department is dedicated to continuously improving its oversight and monitoring of grantees and grant programs. The Department reduces risks for fraud and abuse by identifying high-risk and at-risk grantees and ensuring compensating controls are implemented. The DOJ high-risk grantee program requires appropriate controls to be in place to ensure that grantees with outstanding noncompliance issues implement timely corrective actions to address the issues; a grantee's risk status is addressed during the grant award process; enhanced oversight and monitoring is provided to the grantee. The Department ensures grantees have access to financial and grant fraud training. The OJP Office of the Chief Financial Officer provides training to grantee participants through its Regional Financial Management Training Seminars. These seminars cover critical topics such as subrecipient

monitoring, cost principles for allowable and unallowable costs, reporting requirements, grant fraud, waste, and abuse, audit requirements, and prohibition of excess cash on hand. In December 2011, DOJ launched an on-line financial management training tool for all DOJ grantees and grant management staff.

The Department's Office of Inspector General works closely with the grant components to provide training on detecting and preventing grant fraud to its grantees and staff. For example, since fiscal year 2009, more than 600 OJP employees have participated in grant fraud training.

FEDERAL PROGRAMS FACING CUTS

Question. Under the terms of the Budget Control Act of 2011 (Public Law 112-25), funding for virtually all Federal programs will face an across-the-board cut in January 2013 if the Congress fails to reduce the national debt by \$1.2 trillion. According to CBO estimates, this would result in a cut of roughly 8 percent to programs across DOJ.

How would these cuts affect the Department?

Answer. Under the terms of the Budget Control Act of 2011 (Public Law 112-25), virtually all Federal programs will face an across-the-board cut in January 2013 if the Congress fails to enact legislation that would reduce the national debt by an additional \$1.2 trillion. According to CBO estimates, such an across-the-board cut would result in a reduction of at least 7.8 percent to programs across DOJ. A 7.8-percent reduction equates to a loss in funding of approximately \$2.1 billion.

Question. Please provide a list of expected workforce furloughs, cuts to grant programs, and other reductions at DOJ if sequestration is implemented.

Answer. The Department supports the fiscal year 2013 President's budget request, which would avoid a sequestration, if enacted as proposed. However, the impact of an across-the-board cut of 7.8 percent would mean a reduction of approximately \$2.1 billion to the Department's budget authority. To implement this cut, the Department would have to cut both personnel and operational funding. While the specific implementation of a 7.8-percent across-the-board cut cannot yet be determined, such a cut to DOJ's budget could result in the loss of more than 15,000 personnel, including furloughing all DOJ employees for 25 days. These personnel cuts, along with significant operational cuts, would mean reductions in the apprehension of violent fugitives, fewer Federal Bureau of Investigation (FBI) national security investigations, fewer affirmative litigation efforts, and more crowded prisons. For context, a 7.8-percent cut would mean 5,400 fewer Federal agents and nearly 1,250 fewer attorneys available to investigate and prosecute violent criminals, perpetrators of fraud, fugitives from justice, transnational criminal organizations, and cartels and terrorists. In addition, the Bureau of Prisons would have 2,500 fewer correctional officers to operate prison facilities in a manner consistent with officer and inmate safety and the Department's grant programs would be reduced by \$110 million compromising relationships with State and local law enforcement organizations and programs critical to advancing public safety.

Question. How would these cuts affect the Department's ability to carry out its mission?

Answer. An across-the-board cut of 7.8 percent would jeopardize the Department's ability to fulfill its missions to prevent terrorism, enforce Federal law, and ensure the fair administration of justice.

While the specific implementation of a 7.8-percent across-the-board cut cannot yet be determined, such a cut to DOJ's budget could mean:

- 49,654 fewer immigration matters completed by immigration judges;
- 5,430 fewer matters opened by the National Security Division;
- 7,713 fewer cases filed by U.S. Attorneys;
- 9,705 fewer investigations conducted by the FBI;
- \$335 million more revenue in the pockets of drug trafficking organizations;
- 79 fewer local police hires;
- 300 fewer Foreign Intelligence Surveillance Act applications filed by the National Security Division;
- \$1.6 million decrease in restitutions, recoveries, and fines related to FBI white collar crime investigations; and
- 6,495 fewer bulletproof vests for State and local law enforcement personnel.

QUESTIONS SUBMITTED BY SENATOR PATRICK J. LEAHY

OFFICE OF LEGAL COUNSEL MEMORANDUM—COUNTERTERRORISM OPERATIONS

Question. Earlier this week, you gave a speech outlining some of the legal rationale for the use of lethal force against American citizens overseas in terrorism cases. In your speech, you stated that “the executive branch regularly informs the appropriate Members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.” While your speech was a welcome step toward more transparency about the legal rationale for these actions, it is no substitute for an independent review by the Congress of the actual legal opinion underpinning such actions. As Chairman of the Judiciary Committee, I have made repeated requests for the legal opinions upon which the administration has relied in taking such extraordinary actions against American citizens.

Can you tell me when you will be sending me a copy of the Office of Legal Counsel (OLC) memorandum authorizing the use of lethal force against American citizens in counterterrorism operations, including the operation that killed Anwar al-Awlaki?

Answer. OLC regularly publishes opinions that the office determines are appropriate for publication. The opinion in question is currently covered by executive privilege and therefore will not be released beyond the Department. Moreover, the Department does not comment on any specific case or individual. However, as noted before, the conduct and management of national security operations are core functions of the executive branch, as courts have recognized throughout our history. In order to ensure proper oversight, and in keeping with the law and our constitutional system of checks and balances, the executive branch regularly informs the appropriate Members of Congress about our counterterrorism activities, including the legal framework, and would of course follow the same practice where lethal force is used against United States citizens.

NEW YORK CITY POLICE DEPARTMENT SURVEILLANCE PROGRAM

Question. In recent months, we have heard troubling information about the surveillance operations of New York City Police Department (NYPD)—particularly targeting the Muslim-American community. According to press accounts, the NYPD has been compiling databases of information concerning Muslim Americans residing throughout the northeast, and has used informants called “rakers” and “mosque crawlers” to infiltrate mosques and Muslim student groups. There have also been reports of CIA involvement in NYPD’s surveillance program. Last week, you told a House Appropriations subcommittee that the Department of Justice (DOJ) was reviewing complaints it had received concerning the NYPD’s surveillance program, in order to determine what actions should be taken by DOJ.

I would request that you keep me and my staff updated as to the progress of this review. Can you tell me the current status of the Department’s review into these allegations of civil rights violations by the NYPD?

Answer. At this time, the Civil Rights Division is continuing its review into allegations of civil rights violations by the NYPD Surveillance Program. The Attorney General has authority to bring litigation to address patterns or practices by law enforcement agencies that deprive persons of rights, privileges, or immunities secured or protected by the Constitution or laws of the United States (42 U.S.C. 14141). This authority has been delegated to the Civil Rights Division of DOJ and the Division often works with the local U.S. Attorney’s office. Each allegation of misconduct is reviewed and in a portion of cases, a formal investigation or another response is authorized. Investigations typically involve site visits, hundreds of interviews, and the review of tens of thousands of pages of documents. In addition to Division attorneys and investigators, the Division engages experts, typically well-respected law enforcement executives, to assist in the investigation. There is no way for us to provide a general timeframe for a preliminary inquiry or a formal investigation. Timelines for inquiries and investigations are controlled by the facts found.

Question. As the Department conducts its review of these complaints, I also ask that you evaluate the extent of coordination between the NYPD and the Federal Bureau of Investigation (FBI). I am particularly interested in whether data obtained through NYPD surveillance methods is shared with and used by FBI in accordance with DOJ guidelines. Will you do that?

Answer. FBI and NYPD work together on the Joint Terrorism Task Force, share investigative information, and exchange queries for operational and tactical de-confliction purposes in accordance with DOJ and FBI policies. However, FBI does not receive NYPD surveillance information.

SAME-SEX IMMIGRATION PETITIONS

Question. On April 6, 2011, I wrote to you and the Secretary of Homeland Security, Janet Napolitano, to encourage you to hold marriage-based immigration petitions for same-sex spouses in abeyance in light of the administration's decision to no longer defend the constitutionality of the Defense Against Marriage Act (DOMA). The response I received on May 17, 2011, suggested that discretion may be granted in individual cases, but that the agencies would not exercise discretion in a categorical manner. Subsequently, the Department of Homeland Security (DHS) denied the spousal-based petition of a Vermont couple, Frances Herbert and Takako Ueda who are lawfully married under Vermont statute. Particularly in States such as Vermont, where same-sex marriages are legally recognized, we believe that DHS has the legal authority to hold such cases in abeyance, and to exercise prosecutorial discretion for those in removal proceedings. I ask that you reconsider the administration position articulated in the May 17, 2011 letter. Will you do so?

Answer. While we cannot comment on the specific example cited, DOJ and DHS are continuing to follow the President's direction to enforce DOMA. Both DHS, through U.S. Citizenship and Immigration Services and Immigration and Customs Enforcement (ICE), and DOJ, through the Executive Office for Immigration Review, have discretion to make individual case determinations, and have used that discretion in a number of recent cases. The agencies have not, however, granted any form of blanket relief to the entire category of cases affected by DOMA. As ICE Director Morton described in a June 17, 2011 memorandum, "Providing Guidance on the Exercise of Prosecutorial Discretion Consistent With the Department's Civil Immigration Priorities", ICE's current enforcement priorities are aliens who pose a clear risk to national security or to public safety and those with an egregious record of immigration violations.

 QUESTIONS SUBMITTED BY SENATOR FRANK R. LAUTENBERG

PAN AM 103 BOMBING

Question. Only one person has ever been convicted in connection with the Pan Am 103 bombing, and that person has since been released from prison. On February 28, 2012, Secretary Clinton testified that the United States ongoing investigation into the bombing is primarily a Department of Justice (DOJ) responsibility. What progress has been made on the investigation of the Pan Am 103 bombing?

Answer. We remain committed to pursuing justice on behalf of the victims of this terrorist attack that took the lives of 189 Americans and many others.

We continue to seek more information, as well as access to those who might have been involved in the planning or execution of the bombing. We have made clear—and will continue to make clear—to the Government of Libya the great importance of this case to the United States and our determination to bring all of those responsible to justice.

The investigation into the Pan Am 103 bombing remains open, and we will continue to follow any leads that could result in evidence to support a criminal prosecution.

As this is an ongoing investigative matter, we cannot comment on specific investigative steps that are being taken.

ILLEGAL TRAFFICKING OF TOBACCO

Question. Reports from the Government Accountability Office have identified an estimated tax loss of \$5 billion a year due to the illegal trafficking of tobacco. The tremendous profits and low criminal penalties have attracted the involvement of organized criminal and terrorist groups. The Federal Bureau of Investigation (FBI) has primary jurisdiction on terrorism and organized crime, while the Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) holds primary jurisdiction on cigarette trafficking. How does DOJ ensure that the FBI and ATF work together to prevent illegal tobacco proceeds from financing organized crime and terrorists?

Answer. DOJ's agencies have strong and effective working relationships with their DOJ partners as well as other Federal, State, and local agencies and a history of highly successful joint investigations. Supervisors in the field regularly review investigations on a case-by-case basis and involve other agencies as appropriate. For example, recently the ATF and the FBI worked together on "Operation Secondhand Smoke", an undercover investigation into a nationwide network of retailers, wholesalers, distributors, importers, and manufacturers who were avoiding cigarette taxes to make millions of dollars in profits.

QUESTIONS SUBMITTED BY SENATOR KAY BAILEY HUTCHISON

DEPARTMENT OF JUSTICE'S PREVENTING VIOLENCE AGAINST LAW ENFORCEMENT AND ENSURING OFFICER RESILIENCE AND SURVIVABILITY INITIATIVE TRAINING

Question. Violence against law enforcement officers is at an all-time high. According to National Law Enforcement Officers Memorial Fund statistics, Texas leads the Nation with most police officers killed in the line of duty—1,594. Ensuring the safety of law enforcement is a top priority for all of us in this subcommittee's bill.

During the Fort Hood shooting rampage in 2009, Department of the Army civilian Police Sergeants Kim Munley and Mark Todd were two of the first officers to arrive on the scene. Sergeant Munley was shot multiple times. Sergeant Todd was able to wound and incapacitate the shooter before he could shoot Sergeant Munley again. Both officers credited their swift and heroic actions to the active shooter training they received through the Advanced Law Enforcement Rapid Response Training (ALERRT) Center at Texas State University, which is a partner of the Department of Justice's (DOJ) Preventing Violence Against Law Enforcement and Ensuring Officer Resilience and Survivability (VALOR) Initiative. Their heroic actions show how a small investment in training can have an impact on the safety of our Nation's law enforcement officers.

Can you tell us about the successes of the VALOR Initiative and DOJ's plans to expand this training?

Answer. More than 3,100 law enforcement professionals have received the VALOR Initiative training, in 17 sessions across the country. We have heard from sheriffs and police chiefs that this curriculum has been successfully used in the field. Therefore, we plan to continue promoting, refining, and expanding its availability along with the VALOR Initiative officer toolkit. There have been 8,100 toolkits placed in the field and the Web site has received 2.5 million hits.

The feedback from the training has been positive from the field. Some of the feedback includes:

"It was truly some of the best training I've attended in 12 years as a peace officer here in Georgia. I truly hope and urge you to bring this training back to Georgia for more officers to attend, I would definitely push this training for as many as my colleagues as I could through the chain of command."—Cartersville, Georgia

"This training was excellent, and every officer needs to take it. It's an eye-opening experience! Excellent training!"—Arlington, Texas

"Most relevant training ever to help prepare and heighten awareness."—Arlington, Texas

"I was involved in an incident where the training in pre-attack indicators really helped prevent a violent struggle with a suspect."—San Diego, California

"The training has helped me with being more vigilant and looking for pre-incident indicators of violent attacks and armed persons. Cops become complacent as time goes on. This type of training helps rid the complacency and reopens the eyes of a patrol cop."—San Diego, California

Texas State University and its ALERRT active shooter training has been, and is, an extremely important component of the VALOR Initiative training.

In fiscal year 2011, the Institute for Intergovernmental Research (IIR) received an award as the Bureau of Justice Assistance's (BJA) VALOR Initiative grantee. IIR, through its internal awarding processes, provided a sub-award of \$200,000 to Texas State University for the delivery of 11 ALERRT Active Shooter hands-on training sessions. In fiscal year 2012, IIR will receive its second supplemental award for the VALOR Initiative. IIR has discussed with BJA how it intends to use the fiscal year 2012 funding, including awarding a second subcontract to Texas State University for an anticipated additional \$200,000 to continue delivery of ALERRT trainings across the country. BJA has discussed and is in agreement with the overall proposed work plan. IIR follows its internal subcontracting guidelines as well as Office of Justice Programs' (OJP) guidelines with regard to the expenditure of Federal funds and subcontracting.

Question. Is the Department able to keep up with the requests for this training?

Answer. Given existing resource constraints, it is a challenge to satisfy the high demand of requests for this training. However, BJA is working closely with our grantees to ensure that we are maximizing attendees at each event. To better meet the demand, we are requesting \$5 million in fiscal year 2013, an increase of \$3 million more than the fiscal year 2012 enacted level of \$2 million.

Question. Last year there were 31 cases of violence against U.S. Marshal Task Forces. Seven of these instances resulted in fatalities of Deputy U.S. Marshals or State and local officers working on the task forces.

Is there any type of training being conducted with our Federal law enforcement agencies? (Bureau of Alcohol, Tobacco, Firearms and Explosives [ATF] and U.S. Marshals Services [USMS] conduct training)

Answer. DOJ, through BJA, reached out to Federal law enforcement agencies as the VALOR Initiative was being developed. Specifically, leadership levels of USMS have been briefed on the VALOR Initiative, and coordination and joint efforts, including exchanges of curricula to ensure consistent messaging, are in progress. A team from USMS was invited to and participated in the first VALOR Initiative class held in Tampa, Florida. BJA recently met with USMS staff to further develop coordination and information sharing between both the BJA and the USMS trainings. Leadership of ATF was also briefed on the VALOR Initiative, and collaborative discussions are planned. Staff from the Federal Bureau of Investigation (FBI) was significantly involved in the development of the VALOR Initiative, in particular, the research that supports the program. Coordination with Department of Homeland Security (DHS) law enforcement agencies is also expected. BJA has also coordinated VALOR Initiative trainings through U.S. Attorney's offices, pursuant to the Attorney General's direction that the U.S. Attorneys be engaged in assessing and responding to the officer safety issues in their districts.

Question. Is there any type of coordination with DOJ and our Federal law enforcement agencies to ensure that best safety practices are being shared?

Answer. BJA has made specific outreach to Federal law enforcement agencies to create best safety practices. BJA's VALOR Initiative representatives will attend the current USMS training. USMS representatives will attend a VALOR Initiative training to ensure that best safety practices are shared. Additionally, leadership of the ATF was also briefed on the VALOR Initiative and further discussions are planned.

DOJ law enforcement components participate in DOJ-wide working groups related to agent safety issues, such as body armor standards and requirements. DOJ law enforcement components also compare, collaborate, and share training techniques and methodologies, both formally and informally.

The ATF, Drug Enforcement Administration (DEA), and USMS purchase software licenses for three of the same online courses. Through cross-component discussion and collaboration, these courses have been established as important elements of safety training for agents of all three components.

Components utilize co-located training facilities at Quantico and Federal Law Enforcement Training Center (FLETC) and agents train using driving and firearms ranges as well as simulators. FBI has traveled to other law enforcement component training sites to establish liaison contacts and share best practices.

Furthermore, BJA and Community Oriented Policing Services (COPS) have established the National Officer Safety and Wellness Group. This group brings together law enforcement thought leaders, criminal justice practitioners, and colleagues to share their knowledge and perspectives on improving officer safety and wellness. The group's mission is to contribute to the improvement of officer safety and wellness in the United States by convening a forum for thoughtful, proactive discussion and debate around relevant programs and policies within the law enforcement field. Information and insight gained and shared will help enhance programs, policies, and initiatives related to officer safety and wellness.

NATIONAL ACADEMY OF SCIENCES FORENSICS STUDY

Question. Prior to becoming ranking member, this subcommittee commissioned the National Academy of Science (NAS) Forensics Study. The intent was to show where DOJ lacked in supporting crime labs and how it could provide more support to the forensics community. Unfortunately, it evolved from a narrowly focused non-binding study into a more far-reaching study than what the Congress intended.

While the NAS study did produce some positive results, there are questionable and unrealistic ones, such as creating an independent bureaucracy responsible for oversight of forensics, excluding DOJ from oversight.

Some special interest groups have even used a few of the individual bad cases in the NAS study to attack the credibility of all crime labs and law enforcement, resulting in impulsive and knee-jerk legislative proposals.

I would also note that some of these same organizations were also at the forefront of support for the Webb Crime Commission, which is an example of another "non-binding" study to go bad and result in overreaching and unnecessary legislative proposals.

Does the Department have a position on the NAS forensics study?

Answer. DOJ believes the report from the National Research Council, "Strengthening Forensic Science in the United States: A Path Forward", is a helpful addition

to the public discourse on the state of the forensic science community. The report recommends many useful steps to strengthen the community and enables it to continue to contribute to an effective criminal justice system. The report did conclude, “that forensic science, as a whole, produces valuable evidence contributing to the successful prosecution and conviction of criminals, as well as to the exoneration of the innocent.” However, the report does not, and was never intended to:

- comprehensively assess the forensic science disciplines;
- undermine the use of forensic science in the courtroom;
- offer any judgments on any cases currently in the judicial system; or
- recommend any rule or law changes in the area of evidentiary admissibility.

Question. Does DOJ support creating an independent agency responsible for having jurisdiction over forensics?

Answer. The Department concurs with the need for a concerted national investment to advance forensic science and its utility, which underlies all recommendations cited in the NAS report. However, the Department does not believe that a new forensics agency is necessarily needed to serve the interests of the criminal justice community at the Federal, State, and local levels.

DISCREPANCIES BETWEEN DEPARTMENT OF JUSTICE AND PRESIDENT’S REQUESTS

Question. Attorney General Holder, there are a number of discrepancies between your fiscal year 2013 budget request and the President’s fiscal year 2013 budget request in the Office of Management and Budget’s (OMB) appendix. This can only mean that OMB littered DOJ’s request with programs and funding proposals up until the last minute before releasing the budget.

This is evidence of part of the budget process that is not transparent and should be made public. OMB and the White House are able to adjust program funding levels and direct agencies through “passback” communications that they refuse to publicly disclose, hiding behind the veil of “executive privilege”.

The White House and OMB insert unrequested programs into an agency’s budget request, forcing the agency to cut their own priorities to make room for it. A perfect example of this is the White House inserting \$600 million for COPS Hiring into DOJ’s budget last year. We know you did not request that funding level and it forced you to cut other programs to make room for it.

OMB has authored numerous memos promoting transparency. Since agencies are already required to post congressional communications online, I hope that the chairwoman and my other colleagues will work with me in helping OMB close the circle of transparency by requiring all Federal agencies to post their OMB passback communications online.

During these tough fiscal times, taxpayers, the media and watchdog groups deserve to have full transparency and understand how the White House and OMB influence the budget process and sometimes override what agencies request.

Would you be supportive of being transparent and all OMB budget-related communications being available for the taxpayers to see?

Answer. While DOJ supports transparency, the process involved in the formulation of the President’s budget request requires unimpeded, back-and-forth dialog within the executive branch. These discussions are considered “pre-decisional” and allow the frank and open consultation and discussion that is necessary to reach the most cost-effective and efficient resourcing decisions for the American taxpayer. These internal confidential discussions are not intended to shield dialog, but rather allow the consideration of a wide range of possible options and alternatives. This is based on section 22 of the OMB Circular No. A–11 (2011) “Communications with the Congress and the Public and Clearance Requirements”. The executive branch’s internal deliberations regarding the various issues and options that were considered in the process leading to the President’s decisions, we believe, should remain a matter of internal record. This deliberative process is intended to promote free discussion between agencies and the President and is supported by the doctrine of the separation of powers. It also ensures policy consistency between the President’s budget and budget-related materials given to the Congress.

Question. What are the discrepancies between the DOJ request and the President’s budget in the appendix?

Answer. There are several small discrepancies between the Department’s budget materials, including the fiscal year 2013 budget and performance summary and the individual congressional justifications, and the President’s budget appendix; these discrepancies have been footnoted where appropriate in the DOJ’s budget materials.

The cancellation language proposed for USMS, FBI, DEA, and ATF included in DOJ’s budget materials differs from the language included in the budget appendix

regarding the types of balances proposed for cancellation. DOJ's budget materials reflect the correct language.

The language included in DOJ's budget materials for OJP, State and Local Law Enforcement Assistance, differs slightly from the language included in the Budget Appendix regarding funding levels for certain programs (i.e., National Criminal History Improvement Program, National Instant Criminal Background Check System Improvement Act Grants, and Prison Rape Prevention and Response). The Department's budget materials reflect the correct language.

The number of full-time equivalent (FTE) reported in the DOJ budget summary varies slightly from the numbers reported in the President's budget appendix due to a difference in the methodology used to calculate the base FTE levels.

While the DOJ chapter of the President's budget states that a task force offset is proposed in fiscal year 2013, DOJ is just now finalizing its review of task force operations and an offset is instead anticipated for fiscal year 2014.

Question. What do you attribute these discrepancies to?

Answer. The majority of these discrepancies can be attributed to timing constraints during production of these separate documents, as it is the intent of both the language proposed in the Budget Appendix and the language proposed in the Department's budget materials to accurately report the same information.

The difference in FTE between the DOJ congressional budget submission and the President's Budget Appendix can be attributed to a difference in the methodology used to calculate the base FTE levels. The DOJ congressional budget submission used the authorized FTE level to calculate the base for the enacted FTE in fiscal year 2011 and fiscal year 2012 and the request in fiscal year 2013. The President's Budget Appendix used the actual fiscal year 2011 FTE level as a baseline for developing the fiscal year 2012 and fiscal year 2013 FTE levels, as opposed to using the authorized FTE levels. This leads to a slight discrepancy in the reported FTE level, as footnoted in the Department's budget and performance summary.

DANGER PAY FOR MEXICO

Question. DOJ has given the subcommittee its word that it would be advocating danger pay for USMS and ATF. What is the status of DOJ's negotiations on this? Why is OMB opposed to supporting law enforcement in Mexico receiving danger pay?

Answer. DOJ is continuing to monitor the issue of differential rates of pay for DOJ agents and employees working in danger posts. We are actively engaged in discussions with the Department of State, which has jurisdiction over danger post determinations. The Department of State is acutely aware of our concern and has assured us that it is closely monitoring the situation in Mexico and will add additional danger posts as necessary.

DEPARTMENT OF JUSTICE TASK FORCES

Question. Task forces play a major role in the DEA, USMS, FBI, and ATF missions. I support the consolidation of duplicative efforts, but I am concerned that there may be confusion on the part of the administration in past proposals to consolidate task forces.

Specifically, the USMS Fugitive Task Forces come to mind. USMS have made three times the arrests of all other Federal law enforcement agencies combined.

Can you tell us about the uniqueness of USMS's fugitive task forces and other task forces?

Answer. USMS plays a unique role in implementing DOJ's violent crime reduction strategy as USMS is the Federal Government's primary agency for conducting fugitive investigations, and it apprehends more Federal fugitives than all other law enforcement agencies combined. USMS has also been named the lead DOJ component to investigate and prosecute crimes involving the noncompliance of sex offenders. While USMS is responsible for investigating and apprehending individuals wanted for escaping from Federal prison and for Federal parole and probation violations, it has a long and distinguished history of providing assistance and expertise to other Federal, State, and local law enforcement agencies in support of fugitive investigations. This support is coordinated through the USMS's Domestic Investigations and Sex Offender Investigations Branches, 75 district-based task forces, and 7 regional fugitive task forces, supplemented by three foreign field offices and a wide range of technical surveillance and criminal intelligence capabilities. USMS also participates on Organized Crime Drug Enforcement Task Forces (OCDETF); the OCDETF program has reported that its operations are substantially more effective when supported by USMS.

The 75 district fugitive task forces operate areas not covered by the regional fugitive task forces. The seven regional fugitive task forces operate in the National Capital region, gulf coast region, Great Lakes region, New York-New Jersey region, Pacific-Southwest region, Southeastern U.S. region, and Florida. The combined regional fugitive task force has proven to be a vital tool in ensuring the safety of communities by arresting violent fugitives who prey on society.

USMS's task forces combine the efforts of Federal, State, and local law enforcement agencies to locate and arrest the most dangerous fugitives. All USMS task forces are designed and managed to ensure the highest levels of cooperation, coordination, and deconfliction among participating agencies. While some of this coordination is informal in nature, in other cases, task forces use formal national and local information sharing and deconfliction systems to coordinate investigations and protect officer safety.

USMS locates and apprehends Federal, State, and local fugitives both within and outside the United States. The warrants include but are not limited to:

- homicide;
- rape;
- aggravated assault; and
- robbery; or
- if there was an arrest or conviction in the fugitive's record for any of these offenses; or
- for any sex offense as defined in the Adam Walsh Child Protection and Safety Act.

In fiscal year 2011, USMS task forces:

- arrested 36,268 Federal fugitives;
- arrested 86,449 State and local fugitives;
- cleared 39,398 Federal warrants;
- cleared 113,287 State and local warrants;
- arrested 3,867 homicide suspects;
- arrested 5,005 gang members;
- arrested 12,144 sex offenders;
- arrested 299 fugitives in Mexico; and
- the seven regional fugitive task forces made 41,654 arrests and cleared 52,078 warrants.

DOJ's other primary task forces include DEA's regional task forces, ATF's violent crime impact teams, and FBI's Safe Streets task forces. As these task forces act as the primary investigative and operational arm for their respective agencies, they each leverage unique expertise in fulfilling their missions. For example, DEA's regional task forces have unparalleled knowledge and experience related to identifying, investigating, and ultimately dismantling drug trafficking organizations, which DEA brings to bear in cases throughout the country.

Question. Are there any task forces that you feel may be considered for consolidation or elimination?

Answer. The fiscal year 2013 President's budget does not contain plans to consolidate or eliminate additional task forces. Currently, DOJ is finalizing its comprehensive assessment of task force performance in coordination with ATF, DEA, FBI, USMS, the National Institute of Justice and the Executive Office for U.S. Attorneys. The review will also take into account the extent to which there is overlap or duplication between DOJ-led task forces and those led by other departments and agencies or State, local, or tribal led task forces. This assessment will review all violent crime, drug, gang, and fugitive task forces to determine their effectiveness and will culminate in recommendations to maximize performance and reduce duplication and overlap. The Department anticipates that the assessment will result in the elimination or consolidation of some task force operations.

FAST AND FURIOUS LANGUAGE REMOVED FROM THE REQUEST

Question. As I mentioned in my opening statement regarding Fast and Furious, language was included on the floor in last year's bill that would prohibit Federal law enforcement agencies from selling operable weapons to cartels. The fiscal year 2013 request removes that language saying it's unnecessary. The amendment passed 99-0.

This budget proposes to eliminate a provision that prohibits facilitating the transfer of operable firearms to agents of drug cartels unless those firearms are continuously monitored. The budget request's justification for removing this language only says this "is not necessary." That's hard to explain to the families of the Federal agents killed by those weapons.

Can you elaborate on why the administration doesn't think it's necessary?

Answer. In the fiscal year 2013 President's budget, consistent with past practice of removing prohibitive language that limits executive branch discretion, we proposed not to continue the Fast and Furious provision, which was enacted in fiscal year 2012 with the intention of preventing future "gun walking" operations. The Fast and Furious provision does not need to be continued because, as stated on several occasions, the Department does not intend to engage in any such operations in the future.

Question. Doesn't the fact that it happened in the past suggest that legislation to block it in the future may well be necessary?

Answer. The Attorney General has stated on several occasions that the Department has no intention of engaging in such operations in the future. Indeed, appropriate steps have been implemented to ensure that this type of operation does not occur again. However, given the sensitive nature of this issue, and in recognition of congressional intent to ensure appropriate oversight, DOJ would not object to this language being reinstated in the fiscal year 2013 bill.

CARTELS RECRUITING COLLEGE STUDENTS AND MINORS

Question. There have been reports that cartels are attempting to recruit college students to smuggle drugs into the country, and college campuses could serve as an easy recruiting ground. It's understandable how young students could be enticed by large sums of cash. The reports say that minors are more appealing because criminal penalties are lighter for them. One of the bright spots in your budget request is \$312 million for Juvenile Justice Prevention programs. It's imperative that we educate our children and students on the potential dangers of being involved in cartels.

Are you aware of these threats to college students and Southwest Border youth?

Answer. DOJ has become aware of the threats posed by drug cartels to both college students and students in elementary and high schools along the Southwest border through those who attend and conduct AMBER Alert Southern Border Initiative trainings.

Question. Are any Juvenile Justice Prevention dollars being focused toward education and awareness programs for the Southwest Border youth to understand the dangers of cartels and the drug trade?

Answer. The Office of Juvenile Justice and Delinquency Prevention (OJJDP) has not focused Juvenile Justice Prevention dollars toward education and awareness programs for the Southwest Border youth. However, OJJDP's AMBER Alert Training and Technical Assistance program has developed a partnership with the Boys & Girls Clubs of America, a national nonprofit organization which provides expansion and development of sustainable Boys & Girls Clubs within tribal communities and other communities across the Nation. While OJP does not fund Boys & Girls Clubs activities directly through the AMBER Alert Training and TA program, we have awarded funding to a training and technical assistance provider that has a formal, established partnership with Boys & Girls Clubs of America. Through that partnership, Boys & Girls Clubs have been the conduit for information about gang and drug resistance education to youth who participate in Boys & Girls Clubs activities, and this may include education and awareness about the dangers of cartels and the drug trade for youth along the Southwest Border.

OJJDP also has supported Boys and Girls Clubs. Boys & Girls Clubs provide a variety of prevention programs and activities for youth that help them develop character, education, social, and leadership skills. In addition, the Boys & Girls Clubs provide the Delinquency and Gang Prevention/Intervention Initiative. This community-based initiative targets young people ages 6 to 18 that are at high risk for involvement or are already involved with delinquency and gangs. These youth and teens are directed to positive alternatives and learn about violence prevention.

OJJDP supports gang prevention education in schools. The Gang Resistance Education and Training (G.R.E.A.T.) Program, funded under title V, is a school-based, law enforcement officer-instructed, classroom curriculum administered by OJP's BJA and OJJDP. The delivery and support of the G.R.E.A.T. Program is coordinated through the four Regional Training Centers, the National Policy Board (NPB), a National Training Team and two Federal agency partners:

- FLETC;
- DHS; and
- ATF.

The goal of the G.R.E.A.T. Program is to help youth develop positive life skills that will help them avoid gang involvement and violent behavior. G.R.E.A.T. uses a communitywide approach to combat the risk factors associated with youth involvement in gang-related behaviors. The curricula was developed through the collabo-

rative efforts of experienced law enforcement officers and specialists in criminology, sociology, psychology, education, health, and curriculum design and are designed to reinforce each other. The lessons included in each curriculum are interactive and designed to allow students to practice positive behaviors that will remain with them during the remainder of their developmental years. There are 495 law enforcement agencies in California, New Mexico, Arizona, and Texas that are teaching G.R.E.A.T and 151 of those agencies are within 150 miles of the border of Mexico.

BIG BEND

Question. Attorney General Holder, as I mentioned in the statement, I'm concerned about opening an unmanned border crossing in Big Bend National Park. The negative and unknown variables seem to outweigh the few and minimal benefits. Not to mention that during these tough fiscal times, these funds could be used more wisely elsewhere. It seems to me that if terrorists were to smuggle weapons across the border, they would do so in place that have easily accessible roads with the fewest amount of border officials.

Although it's not under DOJ's jurisdiction, an incident involving criminal activity after the fact very well would be. What is DOJ's position on an unmanned border crossing in this area or any other area?

Answer. DOJ does not administer day-to-day activities regarding U.S. border patrol and defers to DHS in making determinations regarding the installation of border crossings. However, DOJ law enforcement components collaborate daily with Federal, State, and local law enforcement via field offices located throughout the country, including the Southwest Border, to combat crime and deter, detect, and disrupt any national security threats to the United States. DOJ stands ready to work with DHS to address any security concerns regarding border crossings or any other issue involving national security.

SWB COMMUNICATIONS

Question. Big Bend Telephone Company (BBTC) is applying to the Federal Communication Commission (FCC) for a waiver from new rules that would lower the amount of Universal Service Fund (USF) subsidies that BBTC receives. BBTC is located in far West Texas, serves an area the size of Massachusetts, and covers 25 percent of the United States-Mexico border. Without a waiver, we believe that BBTC may go out of business, with no other companies likely to serve the region because the area is so rugged and sparsely populated. Because BBTC provides network transport for the cell phone providers in the area, if BBTC goes dark, so too do the cell phones. Furthermore, BBTC provides critical communications service to numerous DHS facilities along and near the border (including two ports of entry) and to many State and local law enforcement agencies in the area. Without a waiver, these facilities would be at risk of losing their critical phone and broadband capabilities.

If a waiver is not granted by the FCC to BBTC, and if BBTC goes out of business and thus its customers lose service, what would the impact be on national security and public safety if Federal, State, and local law enforcement agencies in the Trans-Pecos region lost its voice and broadband Internet capabilities? Without such critical communications, would these agencies be able to maintain their effectiveness in patrolling and securing nearly 500 mountainous miles of the border? More specifically, how would this impact the safety of Texas communities in the border region? What impact would this have on any DOJ entities or communications?

Answer. Should BTTC go out of business, DOJ would work closely with stakeholders, including DHS, to ensure that any negative impacts on public safety and national security are appropriately addressed.

SENATOR STEVENS CASE

Question. Attorney General Holder, first, I want to compliment you for dismissing the case, and cooperating with the investigation of misconduct and mishandling of evidence in the Government's case against former Senator Ted Stevens.

After your request that the case be dismissed in April 2009, U.S. District Judge Emmett G. Sullivan appointed a team to investigate and report on the misconduct. Henry F. Schuelke III, who was appointed by Judge Sullivan to investigate the case, concluded in a 500-page report DOJ hid evidence that would have helped the Alaska Republican prove his innocence. Most notably, it was called a "systematic concealment" of evidence that could have helped Senator Stevens defend himself.

Despite findings of widespread and intentional misconduct, Schuelke recommended against contempt charges because prosecutors did not disobey a "clear and equivocal" order by the judge, as required under law—which I question.

Four of the six prosecutors who were investigated for their role in the case opposed releasing the report and their names were redacted.

Since Judge Sullivan has ordered that the investigative report in the disgraceful prosecution of Senator Stevens be made public, can you promise this subcommittee that the report by Justice's Office of Professional Responsibility (OPR) will also be made public?

Answer. As DOJ's disciplinary review process has not yet been completed, and due to limitations on public disclosure contained in the Privacy Act, DOJ is unable to release the relevant OPR report at this time. As I have stated previously, the Department will release as much as we can of the OPR report and DOJ findings, at the appropriate time and in a manner consistent with law and due process.

Question. Are any of the prosecutors who engaged in "systematic concealment" of evidence in the *Stevens* case still in prosecutorial roles?

Answer. Mr. Schuelke's report examined the conduct of a number of current and former DOJ attorneys and found evidence of willful nondisclosure of *Brady* and *Giglio* materials involving two of those attorneys, Assistant United States Attorneys (AUSAs) Joseph Bottini and James Goeke. Mr. Bottini is an AUSA in District of Alaska and handles criminal prosecutions. Mr. Goeke is an AUSA in the Eastern District of Washington and likewise handles criminal prosecutions.

Question. Are any of their legal bills also being paid by the taxpayers? If so, please explain how much and the legal justification.

Answer. It is DOJ's long-standing policy to provide representation to Federal employees for conduct performed within the scope of their employment. The purpose for providing representation is to protect the interests of the Government by assuring adequate representation with respect to legal issues in which the United States has a concern and by freeing its employees from the fear that proper and vigorous performance of their duties may result in substantial personal legal expenses. This may be so even where the employee has erred or where, regardless of the lawfulness of the conduct, there is concern that failure to provide representation may result in the establishment of a legal principle that compromises the Government's ability to perform its functions in a proper and lawful manner in the future. Moreover, where there are disputed facts regarding the conduct giving rise to the claim—or where the facts are under investigation—the employee is afforded the benefit of the doubt to the extent it is reasonable to do so. In all cases, the decision of whether or not to provide representation is based upon the currently available information.

Consistent with this long-standing practice, 28 CFR 50.15 and 50.16, and Civil Division Directive 2120A, DOJ received representation requests from six individuals with respect to two matters. At the time representation was needed for the matters referenced below, the facts that it took the Special Counsel several years to gather were not available. In accordance with the usual processes available to Federal executive, legislative, and judicial branch employees, DOJ determined at that time that the prosecutors were acting within the scope of their employment and representation was in the interest of the United States. Private counsel was authorized because direct DOJ representation was not appropriate.

DOJ utilized standard retention agreements that the Department commonly uses in its representation of other Federal employees. Those retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. Those agreements also set hourly rates that are based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that DOJ uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. With respect to the six individuals for whom representation was authorized, to date DOJ has spent \$282,982.51 in connection with the contempt order entered by U.S. District Judge Emmet G. Sullivan on February 8, 2009, in *United States v. Stevens*, No. 08-cr-0231 (D.D.C.), and \$1,633,298.29 in connection with the subsequent investigation by Special Counsel Henry F. Schuelke III, who was appointed by Judge Sullivan on April 9, 2009, and who ultimately produced a 500-page report regarding the investigation.

Question. Does it concern you that the only reason these prosecutors escaped criminal charges is that the judge in the *Stevens* case did not file an order telling the prosecutors to follow the law?

Answer. Yes. DOJ expects its prosecutors to fully comply with their discovery obligations in every case regardless of the existence of a court order directing such compliance. As a result, when the nature of the undisclosed information was brought to my attention in 2009, I authorized DOJ to move to vacate Senator Stevens' conviction and to dismiss the indictment.

DOJ takes its discovery obligations seriously as evidenced by the policies and training requirements that have been implemented since the dismissal of the *Ste-*

vens case. While DOJ continues to review the Schuelke report, and all of the facts and circumstances surrounding the discovery violations that occurred in the *Stevens* prosecution, DOJ prosecutors are expected to comply with their discovery obligations regardless of the existence of a court order.

Question. What are the names of these individuals? Please list what positions and where these individuals have worked since this came to light—to present.

Answer. The publicly filed version of the report identifies all of the subjects in the report. As noted, Mr. Schuelke found evidence that 2 of the 6 subjects willfully withheld discoverable evidence. DOJ understands this series of questions to pertain only to those two individuals. AUSA Joseph Bottini has continued to prosecute cases in the District of Alaska since the *Stevens* trial. After the *Stevens* trial, AUSA Goeke continued as an AUSA in the District of Alaska until May 2009, when he assumed the same position in the Eastern District of Washington.

Question. Please list the cases that these individuals have participated in and the results. For example, one participated in the *Alabama Bingo* case which resulted in acquittals. Another involved the National Security Agency. Please list each case, the outcome, the individuals' names, and what their roles in the cases are.

Answer. We do not think it would be appropriate or useful to list every case on which each attorney has worked. We can tell you that since the *Stevens* trial, AUSA Joseph Bottini has handled a varied criminal caseload, and there have been no findings of prosecutorial misconduct in any of the cases that he has prosecuted. Similarly, AUSA Goeke has continued to handle a routine criminal caseload, and there have been no findings of prosecutorial misconduct in any cases that Mr. Goeke has prosecuted since the *Stevens* trial. If you can identify a specific need for additional information, we will be happy to consider it.

Question. Will any investigation occur if the pending OPR recommends further action?

Answer. No further investigation will occur, but OPR findings are part and parcel of the Federal disciplinary process. Whenever OPR reaches findings of misconduct involving current DOJ employees, imposition of any disciplinary action as a result of those findings must comport with the requirements of Federal law. Federal law requires generally that employees receive at least 30 days' notice of any proposed disciplinary action and that they have an opportunity to respond both orally and in writing to the proposed action. After considering the response, the designated deciding official would determine whether the evidence supports the misconduct charge or charges in the proposal and, if so, whether the recommended discipline is appropriate. If a deciding official determines to suspend the employee for more than 14 days, the employee can appeal that suspension to the Merit Systems Protection Board. If the employee is suspended for 14 days or less, then the employee can file a grievance of the suspension with the agency. If the disciplinary process results in the affirmation of OPR's findings of misconduct, then OPR would ordinarily refer the matter to the appropriate State bar disciplinary authorities for any action they deem appropriate.

QUESTIONS SUBMITTED BY SENATOR LAMAR ALEXANDER

METHAMPHETAMINE IN TENNESSEE

Question. Tennessee had the second-highest number of methamphetamine lab seizures in the country in 2011 (1,687 labs), second only to Missouri. In 2010, Tennessee had the highest number of methamphetamine lab seizures in the Nation with 2,082 seizures. The average cost to clean up a methamphetamine lab is \$2,300, and these costs are putting tremendous strain on State and local law enforcement.

Last November, the Department of Justice (DOJ) helped Tennessee and other States by providing \$12.5 million to address methamphetamine lab cleanup costs. However, this funding will run out in October 2012 according to the statewide Tennessee Methamphetamine Task Force. Without cleanup funds, there is a real incentive to avoid seizing these labs.

Given that this is one of the most urgent drug problems, especially in rural communities with limited resources, DOJ should find a way to help address this problem. In this year's budget will DOJ continue to support methamphetamine lab cleanup efforts in Tennessee?

Answer. DOJ's budget includes \$12.5 million in funding to continue to support methamphetamine lab cleanups in Tennessee and other States. Funding will be prioritized for States, like Tennessee, that have established container programs because these container programs allows DOJ and its State and local partners to complete cleanups in a more cost-effective manner.

In fiscal year 2013, the Office of Community Oriented Policing Services (COPS) requests \$12.5 million to provide assistance to help stem clandestine methamphetamine manufacturing and its consequences, including the cleanup of clandestine laboratories. As in previous years, DOJ assumes that these funds will provide for meth lab cleanup activities.

Question. What is DOJ doing to help State and local law enforcement deal with mobile methamphetamine labs, which account for a growing number of lab seizures?

Answer. Over the past several years, Drug Enforcement Administration (DEA) has developed a container-based cleanup program. Under this program, DEA trains and certifies law enforcement officers to remove gross contaminants from labs (including mobile labs) and dumpsites; secure and package the waste pursuant to State and Federal laws and regulations; and transport the waste to a centrally located, secure container for storage. In States participating in the container program, hazardous waste contractors travel periodically to a central location to remove meth lab contaminants from across the State. In noncontainer States, hazardous waste contractors must travel to each individual lab or dumpsite to secure, package, and remove meth lab contaminants.

DEA will be supporting cleanups in container and noncontainer States in fiscal year 2012 through its various hazardous waste contracts. Currently, eight States have operational container programs (Alabama, Arkansas, Illinois, Indiana, Kentucky, Nebraska, Oklahoma, and Tennessee), and DEA is working with five other States (Michigan, Mississippi, North Carolina, Ohio, and Virginia) to implement the container program during fiscal year 2012. DEA expects these additional five States to have operational container programs in fiscal year 2013. Thus far, the program has resulted in significant cost savings per lab in States that have the containers deployed; a contractor cleanup averages \$2,230 while a container cleanup averages \$320.

As container programs are more cost efficient and more States have operational container programs in fiscal year 2013, \$12.5 million in funding, requested in the fiscal year 2013 President's budget in the COPS appropriation, will continue to be sufficient in fiscal year 2013. DEA has also contacted an additional eight States for potential container program expansion. For those States without container programs, DEA assesses whether or not the program is a cost-effective option. If the state has only limited cleanups, the upfront equipment and training costs can exceed potential container program savings. In these cases, DEA will provide cleanup services through its hazardous waste contractors.

JUSTICE DEPARTMENT ENFORCEMENT AND WIND FARMS

Question. In 2009, Exxon admitted to killing approximately 85 protected birds, including waterfowl, hawks, and owls. The company paid a \$600,000 fine and was required to implement an environmental compliance plan.

The U.S. Fish and Wildlife Service (FWS) has referred similar cases to the Department involving wind farms. I am concerned that wind farms are not being treated the same as oil and gas companies with respect to enforcement of the Migratory Bird Treaty Act (MBTA).

What concerns me the most is that the Justice Department's lack of enforcement betrays a willingness to prosecute certain disfavored groups while giving others a pass. This kind of selective prosecution contradicts the Department's promise of "equal justice under law".

Since it is a criminal violation to kill birds protected by the MBTA and we know that wind mills kills hundreds of thousands of birds each year, including protected bald eagles, why hasn't DOJ taken action? Will DOJ step up enforcement for wind producers in the same way it has oil and gas companies?

Answer. FWS's Office of Law Enforcement (OLE) has primary responsibility for investigating potential criminal violations of MBTA, and refers appropriate matters to DOJ for prosecution. FWS's OLE has stated publicly that, in the context of industrial takings of migratory birds, it focuses its resources on investigating and prosecuting those who take migratory birds without identifying and implementing reasonable and effective measures to avoid the take.

In the context of the electric and oil and gas industries, reasonable and effective measures to avoid the taking of migratory birds have long been identified, and referrals have been made and legal action has been taken when companies knowingly fail to use such measures for avoiding bird mortality. Guidance on preventing bird deaths in the wind energy context has been more recent. However, some reasonable and effective measures for avoiding taking in this industry have been identified. The Department of the Interior released interim guidelines in 2003, and in March 2012, released final Land-Based Wind Energy Guidelines designed to help wind energy

project developers avoid and minimize impacts of land-based wind projects on wildlife and their habitat.

DOJ reviews each referral from OLE carefully, and determines whether to initiate a prosecution based on the principles set forth in DOJ's Principles of Federal Prosecution. DOJ is committed to the fair and evenhanded administration of the MBTA and other criminal wildlife protection laws.

NATIONAL FORENSIC ACADEMY—UNIVERSITY OF TENNESSEE

Question. The National Forensic Academy (NFA), which is located at the University of Tennessee in Knoxville, has been providing hands on forensic training since 2001 at one of the Nation's only training centers where officers and investigators can practice forensic techniques in the classroom and in the field.

NFA works closely with the Bureau of Justice Assistance (BJA) and the National Institute of Justice (NIJ) to provide training courses to Federal, State, and local law enforcement and crime scene investigators, and this cooperation needs to continue.

In 2009, the National Academy of Sciences released a comprehensive report on the needs of the forensic sciences community and concluded that we are not doing enough to support forensics. The report recommended new training and certification initiatives, among others.

At a time when we are trying to control Federal spending, doesn't it make sense to support programs with a proven track record, like those at NFA, instead of creating new Federal training programs to support our forensic training needs?

Answer. NIJ is not creating any new Federal training programs to support the forensic science community. Providing high-quality educational opportunities for forensic science practitioners continues to be a critical goal to maintain high-quality forensic services. In order to increase the number of forensic science training opportunities available to the forensic science, law enforcement, medical, and legal communities, NIJ invested approximately \$12 million in fiscal year 2010 and \$5 million in fiscal year 2011.

In 2011, NIJ's Forensic Science Training and Delivery Program released a solicitation that sought proposals in two major areas: "Delivery of Training" and "Targeted Research on Forensic Science Training Programs."

One goal of the solicitation was to increase the number of no-cost educational opportunities for public crime laboratory personnel and practitioners in forensic science disciplines and provide forensic science training to other relevant criminal justice partners and professionals involved in treating victims of sexual assault. NIJ sought to fund grant awards for the delivery of courses leveraging existing forensic science training curricula or courses developed under a previous NIJ award. Forensic disciplines supported by the program include, DNA, pattern evidence (e.g., fingerprints and firearms), trace evidence, digital evidence, and medicolegal death investigation.

The solicitation conveyed the importance of cost-effectively leveraging existing curricula. For example, the 2011 training solicitation delineated that proposals should not include costs associated with further curricula development or modification.

The University of Tennessee's NFA received one award for \$450,000 for "Specialized Crime Scene Investigator Training in Forensic Digital Photography and Crime Scene Mapping" in fiscal year 2011 (2011-DN-BX-K567). NIJ has competitively funded numerous trainings geared toward crime scene investigators, forensic scientists, prosecutors, defense attorneys, law enforcement officers, and judges. Additionally, the University of Tennessee's NFA, with grant funding from BJA, has produced successful and popular training courses for many years. The University of Tennessee's Law Enforcement Innovation Center and its instructors do an excellent job training crime scene investigators during an intensive 10-week in house course.

NIJ will not be offering a targeted solicitation for training in fiscal year 2012 in order to evaluate the various training programs, and it will conduct a gap analysis of critical needs. We hope to initiate this evaluation during fiscal year 2012 to determine how best to proceed with training in the future. However, there are still various training opportunities available through the ongoing training grants from past years. Moreover, there are various Federal grants that may be used for the purpose of training individuals at State and local agencies, such as the DNA Backlog Reduction and Coverdell Forensic Science Improvement programs. For example, Paul Coverdell funds may be used to bring in a trainer to provide specialized training in-house or funds may be used to attend trainings/meetings related to improving the timeliness and quality of forensic and/or medical examiner services.

In the fiscal year 2011 proposal from the State of Tennessee, one of the goals of the Office of the Acting State Chief Medical Examiner (OCME) is to educate county

medical examiners, medical investigators, and/or regional forensic center nonphysician employees who serve as death investigators in basic death scene investigation techniques. Priority would go to individuals without any formal training in death investigation. While each grand division of Tennessee is included, this grant focuses on the smallest offices in the eastern division, because of a recognized need for very basic training in those regions. The OCME intends to send seven participants from across the State to either the winter or spring session of the Medicolegal Death Investigation Course in St. Louis, Missouri.

BUREAU OF PRISONS

Question. The Federal Bureau of Prisons (BOP) is estimated to be operating at 43 percent more than rated capacity by the end of fiscal year 2013, and overcrowding at high- and medium-security facilities is projected to be 52 percent and 63 percent, respectively. DOJ's fiscal year 2013 budget submission states:

"In light of overcrowding and stresses on prison staffing, BOP's ability to safely manage the increasing Federal inmate population is one of the Department's top 10 management and performance challenges identified by the Office of the Inspector General in the DOJ [Performance and Accountability Report]."

Additionally, the Inspector General Performance and Accountability Report states:

"In sum, the Department continues to face difficult challenges in providing adequate prison and detention space for the increasing prisoner and detainee populations and in maintaining the safety and security of prisons."

I recognize the fiscal year 2013 budget submission includes funding for an additional 3,496 beds (2,496 beds in Federal facilities and 1,000 new beds in contract facilities). However, BOP is projecting its population will grow by 6,500 inmates during that time, which means crowding will only get worse.

What additional resources are needed to provide the beds required to meet capacity?

Answer. Continuing increases in the inmate population pose ongoing challenges for BOP. The administration has taken several actions to control Federal prison crowding including expanding capacity and supporting legislation that will control prison population growth.

The fiscal year 2013 budget requests \$81.4 million in program enhancements to acquire 1,000 private contract beds and to begin activating two institutions, the United States Penitentiary at Yazoo City, Mississippi and the Federal Correctional Institution at Hazelton, West Virginia. These new contract beds and the two prisons will increase BOP's capacity by 3,496 beds once fully activated. (Exhibit O, Status of Construction, in the fiscal year 2013 President's budget request for buildings and facilities gives additional information on pending construction projects.)

In addition, the administration supports two prisoner re-entry provisions included in the Second Chance Reauthorization Act of 2011 (S. 1231), which was voted favorably out of the Judiciary Committee but has not yet been scheduled for Senate floor action. The bill contains provisions to increase inmate good conduct time by 7 days per year and to provide a 60-day per year incentive for participation in recidivism-reducing programs. If enacted, these legislative proposals will help control the long-term prison population growth and result in an estimated cost avoidance of \$41 million; the President's budget assumes enactment of these proposals and the corresponding savings.

Question. Is contract confinement a cost-effective solution for housing low to minimum security offenders? Given current costs at contractor and BOP facilities, is contract confinement a cost-effective way to deal with overcrowding issues?

Answer. Contract confinement can be cost-effective when used for housing low-security male criminal aliens. These inmates are particularly well-suited for contract confinement because their typically short sentence lengths and alien status generally preclude them from participating in sentence and recidivism reducing programs. Adding low-security private contract beds increases total system capacity and helps control overcrowding in low-security BOP facilities. At the end of fiscal year 2011, low-security overcrowding was 39 percent, which equates to about 80 percent of low-security inmates being triple bunked, and in some cases regularly being housed in television rooms, open bays, program space, etc.

QUESTIONS SUBMITTED BY SENATOR LISA MURKOWSKI

INDEMNIFICATION OF LEGAL FEES INCURRED BY STEVENS PROSECUTORS

Question. How much money was in fact spent defending the prosecutors, what the money was spent defending the prosecutors from, and why did the Justice Department spend the money?

Answer. It is the Department of Justice's (DOJ) long-standing policy to provide representation to Federal employees for conduct performed within the scope of their employment. The purpose for providing representation is to protect the interests of the Government by assuring adequate representation with respect to legal issues in which the United States has a concern and by freeing its employees from the fear that proper and vigorous performance of their duties may result in substantial personal legal expenses. This may be so even where the employee has erred or where, regardless of the lawfulness of the conduct, there is concern that failure to provide representation may result in the establishment of a legal principle that compromises the Government's ability to perform its functions in a proper and lawful manner in the future. Moreover, where there are disputed facts regarding the conduct giving rise to the claim—or where the facts are under investigation—the employee is afforded the benefit of the doubt to the extent it is reasonable to do so. In all cases, the decision of whether or not to provide representation is based upon the currently available information. Those facts revealed that in the referenced matters the prosecutors were acting within the scope of their employment and representation was in the interest of the United States. Private counsel was authorized because direct Department representation was not appropriate.

DOJ authorized representation of six individuals with respect to two matters and used standard retention agreements that the Department commonly uses in its representation of other Federal employees. Those retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. Those agreements also set hourly rates that are based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that DOJ uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. With respect to the six individuals for whom representation was authorized, to date DOJ has spent \$282,982.51 in connection with the contempt order entered by U.S. District Judge Emmet G. Sullivan on February 8, 2009, in *United States v. Stevens*, No. 08-cr-0231 (D.D.C.), and \$1,633,298.29 in connection with the subsequent investigation by Special Counsel Henry F. Schuelke III, who was appointed by Judge Sullivan on April 9, 2009.

Question. Did DOJ enter into any agreement with the prosecutors or their counsel prior to expending these funds? If so, please provide copies of all such agreements.

Answer. DOJ did not enter into any agreement with the prosecutors. In accordance with our usual practice, we sent our standard retention letter to the private counsel retained to represent the prosecutors and received back DOJ's standard retention agreement signed by private counsel. As noted above, the retention agreements imposed caps on the number of hours of work for which, absent unusual circumstances, counsel would be reimbursed. The agreements also set hourly rates that are based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that the Department uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act. Copies of the retention letters and executed agreements are attached. (see Attachment 1)

ATTACHMENT #1

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, April 21, 2009.

KENNETH L. WAINSTEIN,
O'Melveny & Myers, 1625 Eye St., NW, Washington, DC 20006.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. WAINSTEIN: The Department of Justice has concluded that it reasonably appears at this time that representation of Joseph Bottini in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that rep-

resentation of Mr. Bottini by attorneys employed by the Department of Justice is inappropriate. Mr. Bottini has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Bottini should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Bottini in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

The Department of Justice is continuing to experience delays in its mail delivery, as mail addressed to the Department continues to be forwarded to out-of-State facilities for irradiation. Therefore, please e-mail the signature page of the retention agreement to the attention of Ms. Lago at virginia.lago@usdoj.gov. In addition, please e-mail your invoices to doj.private-counsel-program@usdoj.gov, or you may mail them to Ms. Lago's attention at P.O. Box 7146, Washington, DC 20044. Reimbursement of allowable fees and expenses will become available on the Civil Division's receipt of the signed addendum.

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:

Accounts Maintenance Unit
Attn: Gina McLaughlin
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is es-

sential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour

b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour

c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour

d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. *PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. *GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. *TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Joseph Bottini, in connection with a Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: KENNETH L. WAINSTEIN

Date: April 23, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, June 16, 2009.

MATTHEW I. MENCHEL,
Kobre & Kim, 800 Third Avenue, New York, NY 10022.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. MENCHEL: The Department of Justice has concluded that it reasonably appears at this time that representation of James Goeke in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Goeke by attorneys employed by the Department of Justice is inappropriate. Mr. Goeke has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Goeke should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Goeke in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

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Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

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The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

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The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate

number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

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The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. *EXPENSES*

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In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

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The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

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The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. *FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable

hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent James Goeke, in connection with a Special Counsel investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: MATTHEW L. MENCHEL

Date: September 18, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, May 19, 2009.

ROBERT D. LUSKIN, ESQ.,
Patton Boggs, 2550 M St., NW, Washington, DC 20037.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. LUSKIN: The Department of Justice has concluded that it reasonably appears at this time that representation of Nicholas Marsh in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Marsh by attorneys employed by the Department of Justice is inappropriate. Mr. Marsh has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Marsh should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Marsh in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to: Accounts Maintenance Unit
Attn: Gina McLaughlin
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Thank you for your assistance in this matter.
Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

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The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period

of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or ex-

planation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Nicholas Marsh in connection with a Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: ROBERT D. LUSKIN

Date: May 26, 2009

Tax Identification Number: _____

CIVIL DIVISION,
 U.S. DEPARTMENT OF JUSTICE,
 Washington, DC 20530, April 21, 2009.

CHUCK ROSENBERG, ESQ.,
 Hogan & Hanson LLP, 555 Thirteenth Street, NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. ROSENBERG: The Department of Justice has concluded that it reasonably appears at this time that representation of Brenda Morris in connection with

a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Morris by attorneys employed by the Department of Justice is inappropriate. Ms. Morris has requested that the Department agree to reimburse you for her representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Morris should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms. Morris in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to: Accounts Maintenance Unit
Attn: Gina McLaughlin
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish

tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Brenda Morris in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: CHUCK ROSENBERG

Date: April 30, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, April 22, 2009.

BRIAN M. HEBERLIG,
Steptoe & Johnson, 1330 Connecticut Ave., NW, Washington, DC 20036.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. HEBERLIG: The Department of Justice has concluded that it reasonably appears at this time that representation of Edward Sullivan in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Sullivan by attorneys employed by the Department of Justice is inappropriate. Mr. Sullivan has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Sullivan should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Sullivan in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146

Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:
Accounts Maintenance Unit
Attn: Gina McLaughlin
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the

expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. *LEGAL FEES*

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. *EXPENSES*

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. *FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

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 Washington, D.C. 20530
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8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. § 50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Edward Sullivan in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: BRIAN M. HEBERLIG

Date: April 24, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, April 21, 2009.

WILLIAM W. TAYLOR III,
Zuckerman Spaeder, 1800 M Street, NW, Suite 1000, Washington, DC 20036-5807.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. TAYLOR: The Department of Justice has concluded that it reasonably appears at this time that representation of William Welch in connection with a Special Counsel criminal contempt investigation in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Welch by attorneys employed by the Department of Justice is inappropriate. Mr. Welch has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. §50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Welch should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Welch in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:

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Attn: Gina McLaughlin
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

- a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;
- b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;
- c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;
- d. any legal work that advances only the individual interests of the employee; and
- e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

- a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour
- b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour
- c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour
- d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. FORMAT OF BILLS

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent William Welch in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: WILLIAM W. TAYLOR III

Date: May 8, 2009

Tax Identification Number: _____

CIVIL DIVISION,
 U.S. DEPARTMENT OF JUSTICE,
 Washington, DC 20530, February 27, 2009.

CHUCK ROSENBERG, ESQ.,
 Hogan & Hartson LLP, 555 Thirteenth Street, NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. ROSENBERG: The Department of Justice has concluded that it reasonably appears at this time that representation of Brenda Morris in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Morris by attorneys employed by the Department of Justice is inappropriate. Ms. Morris has requested that the Department agree to reimburse you for her representation in this

matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Morris should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms. Morris in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

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Thank you for your assistance in this matter.

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Director, Torts Branch.

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Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

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8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Brenda Morris in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: CHUCK ROSENBERG

Date: March 3, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, February 18, 2009.

HOWARD M. SHAPIRO, ESQ.,
Wilmer Hale, 1875 Pennsylvania Ave., NW, Washington, DC 20006.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. SHAPIRO: The Department of Justice has concluded that it reasonably appears at this time that representation of Patty Merkamp Stemler in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Ms. Stemler by attorneys employed by the Department of Justice is inappropriate. Ms. Stemler has requested that the Department agree to reimburse you for her representation in this matter. Pursuant to 28 C.F.R. §50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Ms. Stemler should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Ms. Stemler in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing her to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

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Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
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The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

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To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

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The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. *FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes

that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. BILLING ADDRESS

The retained attorney should submit all bills to:
 Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent Patty Merkamp Stemler in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: HOWARD M. SHAPIRO

Date: February 19, 2009

Tax Identification Number: _____

CIVIL DIVISION,
U.S. DEPARTMENT OF JUSTICE,
Washington, DC 20530, February 18, 2009.

MARK H. LYNCH, ESQ.,
Covington & Burling, 1201 Pennsylvania Ave., NW, Washington, DC 20004.

RE: Special Counsel Criminal Contempt Investigation Arising from *United States v. Stevens*, 08-cr-0231 (D.D.C.)

DEAR MR. LYNCH: The Department of Justice has concluded that it reasonably appears at this time that representation of William Welch in connection with a contempt proceeding in the above-referenced action is in the interest of the United States. It also appears at this time, however, that representation of Mr. Welch by attorneys employed by the Department of Justice is inappropriate. Mr. Welch has requested that the Department agree to reimburse you for his representation in this matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and Mr. Welch should be aware that, by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary liability that might be imposed against Mr. Welch in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing him to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact Attorney Advisor Virginia G. Lago at (202) 616-4328.

If you find the provisions of the agreement acceptable, please return the signed addendum, along with your firm's tax identification number, to the following address:

Virginia G. Lago, Esq.
Torts Branch, Civil Division
U.S. Department of Justice
P.O. Box 7146
Washington, DC, 20044

In addition, enclosed you will find a copy of the ACH VENDOR Direct Deposit Form. Please fill out the blank areas on the form and fax the completed form to:

Accounts Maintenance Unit
Attn: Gina McLaughlin
FAX: (202) 616-2207

The Debt Collection Improvement Act of 1996 requires that most payments by the Federal Government, including vendor payments, be made by electronic funds transfer. If you have any questions regarding the delivery of remittance information, please contact the financial institution where your account is held. If you have any questions regarding completion of this form, please contact Ms. McLaughlin at (202) 616-8103.

Thank you for your assistance in this matter.

Very truly yours,

TIMOTHY P. GARREN,
Director, Torts Branch.

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR
REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour

b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour

c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour

d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. *FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

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The retained attorney should submit all bills to:

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 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. PROMPT PAYMENT

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. GAO REVIEW

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. TERMINATION

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent William Welch in connection with Special Counsel criminal contempt investigation in *United States v. Stevens*, 08-cr-0231 (D.D.C.) will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: MARK H. LYNCH

Date: February 24, 2009

Tax Identification Number: _____

Question. Did the Justice Department have any role in the selection of private counsel retained to represent its prosecutors? If so, how was this role exercised?

Answer. The Department of Justice, upon determining that private counsel should be provided, informs the employees to contact private counsel of their choosing. If an employee is having difficulty in doing so, the Department will attempt to assist the employee in finding counsel. Once the employee selects counsel, the terms of retention as outlined in our standard retention letter and agreement are explained and, if private counsel agrees to the terms regarding reimbursement, he or she signs and returns the retention agreement to the Civil Division.

Question. What cost controls, if any, were imposed on the private counsel retained to represent the Department prosecutors?

Answer. Cost controls are specified in the retention agreement and Civil Division Directive 2120A (see Attachment 2). The retention agreement used by the Department requires the submission of detailed monthly bills, provides for GAO audit of the private attorney time sheets, places a maximum limit on the attorney's billable hours per month (however the agreement also provides that we will consider paying more if the press of litigation clearly necessitates the expenditure of more time), limits the maximum hourly fee that may be charged, and limits the services for which the private attorney will be compensated to those directly associated with the litigation. As noted above, the hourly rates are set based on the attorney's experience and are well below—and in some cases less than 50 percent of—the rates that the Department uses when determining rates to pay prevailing parties against it in Washington, DC, under the Equal Access to Justice Act.

ATTACHMENT #2

[U.S. Department of Justice, Civil Division, Administrative Directive CIV 2120A]

RETENTION AND PAYMENT OF PRIVATE COUNSEL

MAY 1, 2002

Subject: Retention and Payment of Private Counsel

1. PURPOSE.

This directive sets forth the procedures for entering into agreements to retain private counsel to represent Federal employees at Federal expense and the procedures for paying private counsel fees and expenses.

2. SCOPE.

The provisions of this directive apply to all branches, staffs, and offices within the Civil Division.

3. DEFINITIONS.

a. A Private Counsel is a private attorney with whom the Department of Justice has entered into an agreement regarding compensation for the representation of a person, persons, or an entity being sued, prosecuted, or subpoenaed for acts performed in the service of the United States where the Department has determined that such representation is in the interest of the United States. The Department may enter into such compensation agreements with private counsel in any instance described in 28 C.F.R. § 50.15. Under the authority of 28 U.S.C. § 517, the Department may also enter into such agreements with private counsel for the representation of a person, persons, or entity in circumstances similar to those described in 28 C.F.R. § 50.15.

b. The Assigned Attorney, or the "Department attorney assigned," refers to the Civil Division attorney having assigned responsibility for the case and not to the Assistant United States Attorney who may be handling the case in the local district.

c. An "Employee," for the purposes of this directive, is a present or former employee of the United States or any other person or entity to whom or to which the Civil Division extends representation under the authority of 28 U.S.C. § 517.

4. AUTHORITY.

28 C.F.R. § 50.16(b) gives the Assistant Attorney General of the Civil Division the responsibility for establishing procedures for the retention of private counsel, including the setting of fee schedules. 28 C.F.R. § 50.16(a) makes the retention of private counsel subject to the availability of funds.

5. POLICY.

a. Department attorneys responsible for cases involving the retention of private counsel will determine from the Civil Division's Office of Planning, Budget, and Evaluation if funding is available for estimated private counsel costs PRIOR to submitting the formal request for authorization to enter into a private counsel retention agreement.

b. Once the Assistant Attorney General authorizes a private counsel representation agreement in accordance with 28 C.F.R. §§ 50.15 and 50.16, the Department of Justice will, SUBJECT TO THE AVAILABILITY OF APPROPRIATIONS, pay a private attorney, or other members of the attorney's firm, for those legal services reasonably necessary in the defense of a current or former Federal employee in civil, congressional, or criminal proceedings. The Department will not pay for services that it determines are not directly related to the defense of issues such matters present. Additionally, the Department will not pay for services, even if they are directly related to the defense of those issues, if the Department determines that the services are not in the best interests of the United States. The Department will not pay for services that advance only the interest of the employee.

6. RESPONSIBILITIES.

a. The Assistant Attorney General, Civil Division, authorizes the representation of private counsel and determines what steps the Division will take when representation is warranted but funds are not available for it. The Assistant Attorney General may delegate these responsibilities to another appropriate Division official (a designee).

b. The Deputy Assistant Attorney General for the Torts Branch reviews and authorizes requests for additional private counsel hours and unusual private counsel expenses in cases that are the responsibility of other litigating divisions within the

Department. He or she also decides whether the Department will reimburse an employee for previously incurred private counsel expenses.

c. Directors of the Civil Division's branches, offices, and staffs (hereinafter "Directors") send decision memoranda to the Assistant Attorney General (or designee) requesting authority to enter into retention agreements with private counsel and forward Memoranda for the File authorizing such agreements. They may sign letters presenting retention agreements to private counsel when the Assistant Attorney General has authorized retention of private counsel. They also review and decide routine private counsel billing disputes and requests for additional private counsel hours and costs after the assigned case reviewer has informed the private counsel of the Department's disallowance of a fee or expense. Directors refer such disputes to the appropriate Deputy Assistant Attorney General to review and decide the issues when the nature or expense of the case suggests the need to do so.

d. Reviewers for cases involving retained private counsel examine bills received from those counsel and certify them for payment, after review by the assigned attorney. Where the reviewer determines that the Department cannot pay for certain items as submitted, the reviewer informs the private counsel in writing of the Department's determination and of the private counsel's right to seek a redetermination from the appropriate Director.

e. Attorneys assigned to cases involving requests for private counsel estimate the costs of private counsel, inquire about the availability of funds for private counsel costs, prepare requests to enter into private counsel retention agreements, secure the actual agreement with private counsel, request the obligation of funds, suggest the deobligation of funds, submit all related documentation for processing, and review and certify private counsel bills for payment.

f. The Office of Planning, Budget, and Evaluation (OPBE), Civil Division, determines the availability of funds for private counsel, obligates and deobligates funds for the payment of private counsel, reviews bills for payment from private counsel, and arranges for the payment of private counsel from the U.S. Treasury.

7. PROCEDURES.

a. *Obtaining Authorization For Private Counsel Retention Agreements.*

(1) *Determining the Availability of Funds.* Unless the retention of private counsel is clearly unwarranted under 28 C.F.R. § 50.16, attorneys responsible for cases in which the possibility of representation arises must DETERMINE THE AVAILABILITY OF FUNDS for any potential private counsel retention agreement BEFORE SEEKING APPROVAL to enter into any such agreement.

(a) The attorney must estimate the cost of a private counsel for the fiscal year based on the kind of services needed, the schedule of fees, and the approximate number of hours to be worked.

(b) The attorney should send a memorandum to the Director of OPBE inquiring about the availability of funds for the estimated private counsel costs.

(c) OPBE will determine whether sufficient funds are available to enter into a retention agreement and will notify the attorney accordingly in writing. If funds are available, OPBE will commit to the case the amount estimated for the current fiscal year and will simultaneously reduce funding availability by the amount of the estimate. OPBE will obligate funds following the execution of a retention agreement (see section 7.c.). OPBE will establish monthly reports tracking availability, commitments, obligations, and payments by Branch.

(2) *Requesting Authorization for Private Counsel Retention Agreements.*

(a) After the attorney determines the availability of funds from OPBE, the attorney's Director will send a memorandum to the Assistant Attorney General (or designee) to obtain a decision on the retention of private counsel for the case. The memorandum will recommend whether to retain private counsel; will recommend, if appropriate, the private counsel to be retained; and will forward the supporting documentation necessary for the Assistant Attorney General (or designee) to make a decision. THE MEMORANDUM MUST TRANSMIT:

1. a written verification from OPBE that the Civil Division either has or does not have sufficient funds to pay for the estimated private counsel costs. In emergency situations, the memorandum may report an oral verification from OPBE, with the written verification for the record submitted later.

2. a Memorandum for the File, for the signature of the Assistant Attorney General (or designee), that will authorize the retention of private counsel and will approve the attorney to be retained (see Exhibit 1 for sample Memorandum for the File).

(b) The Assistant Attorney General (or designee) will consider the availability of funds in determining whether to authorize private counsel pursuant to 28 C.F.R. § 50.16. When private counsel representation is warranted and sufficient funds are not available, the Assistant Attorney General (or designee) may direct the Division to seek additional funding from the Justice Management Division. After signing the Memorandum for the File authorizing the proposed retention of private counsel, the Assistant Attorney General (or designee) will forward it to the originating Director, who will return it to the originating attorney.

b. *Establishing Private Counsel Retention Agreements.* Where the Assistant Attorney General (or designee) approves the retention of private counsel, the private counsel must sign a formal retention agreement that sets forth the terms and conditions of the representation. This written agreement will describe the legal fees and expenses that the government agrees to pay and the format and frequency of the bills that the private counsel will submit for payment.

Once the attorney receives the signed Memorandum for the File authorizing the retention of private counsel, the attorney will prepare the formal retention agreement, with a transmitting letter for the signature of the attorney's Director. After the Director signs the forwarding letter, the attorney will send these documents to the private counsel for signature. Exhibit 2 is a sample forwarding letter with the formal retention agreement.

THE PRIVATE COUNSEL MUST SIGN AND RETURN THE AGREEMENT TO THE DEPARTMENT ATTORNEY ASSIGNED TO THE CASE BEFORE THE GOVERNMENT CAN PAY FOR ANY SERVICES.

c. *Establishing an Obligation for Retained Private Counsel.* Once the assigned attorney receives the signed agreement from the private counsel, the attorney will prepare and send a memorandum to OPBE requesting the establishment of a financial obligation for the estimated costs of the private counsel (see the sample memorandum in Exhibit 3). In this memorandum, the attorney will estimate the total cost of the legal fees and expenses under the agreement. If the attorney anticipates that the case will require the private counsel's services longer than the current fiscal year, the memorandum should provide an estimate for each fiscal year. The attorney must attach to this memorandum:

- (1) a copy of the Memorandum for the File authorizing the retention of private counsel;
- (2) the signed retention agreement and forwarding letter; and
- (3) OPBE's original written certification of the availability of funds for the agreement. After receiving the memorandum requesting an obligation with these supporting documents, OPBE will obligate funds for the payment of private counsel costs.

d. *Deobligating Funds.* The assigned attorney will closely monitor the progress of the case and will promptly notify OPBE when the case concludes or when the need for private counsel ends. Thereupon, OPBE and the attorney will assess the total and expected payments, and, if surplus funds remain obligated for the case, OPBE will deobligate those funds so that they will be available for other requests for private counsel representation.

e. *Payment of Private Counsel Bills.*

(1) The retained private counsel must seek Department approval for any additional hours of service or any unusual expenditures not specifically allowed in the retention agreement BEFORE undertaking such services or incurring such expenses. The private counsel will make written request for authorization to the Department attorney assigned to the case. The assigned attorney, in consultation with the assigned case reviewer, will convey the Department's decision by letter to the retained private counsel.

In cases that are the responsibility of other litigating divisions of the Department, the Deputy Assistant Attorney General for the Torts Branch will review and authorize requests for additional hours or unusual costs.

(2) Private counsel will submit bills on a monthly basis to the Director of OPBE for processing and payment.

(3) OPBE will route the bill to appropriate individuals for review prior to payment. OPBE will attach a cover sheet to the bill with delineated spaces or blocks for each individual in the review process and a schedule for processing the bill at each stage of review. Each reviewer will enter the results of his or her review and will endorse the appropriate space on the cover sheet.

(4) OPBE will examine each bill to ensure its consistency with the financial conditions of the retention agreement (billable hours, legal fees, expenses, etc.) and the accuracy of the mathematical calculations. OPBE will not examine the necessity or reasonableness of any service. OPBE will certify the correctness of

the bill for the items within the scope of its review or will note any discrepancies it discovers.

(5) OPBE will forward the bills, with the above certification or notation of discrepancies, to the assigned attorney for review and certification for payment. OPBE will not forward those billing items that the retained private counsel has indicated might compromise litigation tactics if disclosed to assigned Department attorneys, pursuant to paragraph 5 of the addendum to the retention agreement. In these instances, the Director responsible for the case will identify uninvolved Department attorneys who will independently review those sensitive portions of the bill directly for OPBE.

On receiving the bill, the attorney will review and then certify, if appropriate, the necessity and reasonableness of the services indicated and will forward the bill to the assigned case reviewer for his or her certification. The assigned case reviewer will then sign the bill, if appropriate, and return it to OPBE for payment.

(6) Once the appropriate parties have properly reviewed and certified the bill as payable, OPBE will submit it for payment to the U.S. Treasury, through the Justice Management Division.

(7) Should this review process uncover any discrepancies or nonreimbursable items, the assigned attorney will prepare a letter for the signature of the assigned case reviewer to inform the private counsel of the items not payable as presented and to explain the reasons. The letter should ask the private counsel to submit either a revised bill or an explanation of any item for which information is insufficient to determine if the item is payable. The assigned case reviewer will forward a copy of the signed letter with the disputed bill to OPBE.

Should the private counsel contest the disallowance of any items that the Department will not pay, the private counsel may submit a request for reconsideration to the appropriate Director, who will decide the matter for the Department and will inform the private counsel of the decision by letter.

(8) THE PROMPT PAYMENT ACT REQUIRES THE PAYMENT OF PRIVATE COUNSEL BILLS WITHIN 30 DAYS OF RECEIPT AND THE NOTIFICATION OF ANY DEFECTS IN BILLS WITHIN 7 DAYS OF RECEIPT IN THE CIVIL DIVISION. FAILURE TO ADHERE TO THESE TIME REQUIREMENTS MAY RESULT IN THE ASSESSMENT OF INTEREST PENALTIES. To avoid the possible assessment of interest penalties, OPBE will complete its initial review of private counsel bills and will forward them to the assigned attorney within 3 days of their receipt. Within 3 days of receiving the bill from OPBE, the assigned attorney will ensure the complete certification of the bill for payment and will return it to OPBE or will ensure the posting of a letter to the private counsel concerning defects in the bill.

f. *Payment for Previously Incurred Private Counsel Expenses.*

(1) *Preparation and Routing of Request.* In the event that an employee seeks reimbursement for private counsel expenses incurred in a matter that has already concluded or in which the direct representation by Department of Justice attorneys has become available, the employee or the employee's private attorney may submit a request to the General Counsel of the employee's agency. The employing agency shall forward the request to the Director of the appropriate branch, office, or staff of the Civil Division. The Director will assign the matter to a trial attorney.

(2) *Content of the Request.* The request for reimbursement for past representation must include a complete statement of the fees and expenses for which the employee is seeking reimbursement. This statement should follow the format described in the sample reimbursement agreement (see Exhibit 2). The request should also include an explanation from both the employee and the employing agency of the reason or reasons why direct representation by the Department of Justice was not sought or was not available.

(3) *Assessment of the Statement of Fees and Expenses.* The assigned attorney will forward the statement of fees and expenses to OPBE for a review of computational accuracy and for consistency with the financial terms and conditions of the normal representation agreement. After that review, OPBE will return the bill to the assigned attorney with an explanation of any computational errors and non-conforming items. OPBE will also certify whether funds are available to pay the bill, after allowances for computational errors (no allowance being made for non-conforming items). On receipt of OPBE's assessment, the assigned attorney will review the statement of fees and expenses, including any non-conforming items, and will certify them for payment if they are reasonable in light of all the circumstances. In no case will the Department approve an

hourly rate in excess of the rate then applicable for an attorney of the experience level of the billing private counsel.

(4) *Preparation of Recommendation for Approval.* The assigned attorney will then prepare a memorandum for the signature of his or her Director requesting that the Deputy Assistant Attorney General for the Torts Branch approve the payment of the private counsel. A request for approval must include:

- (a) the employee's request and the agency's views;
- (b) OPBE's confirmation that appropriated funds are available to pay the bill;
- (c) a recommendation as to the amount the Department should pay; and
- (d) a Memorandum for the File to record the Deputy Assistant Attorney General's decision (see Exhibit 4).

A retention agreement is not necessary.

(5) *Instituting the Decision.* The Deputy Assistant Attorney General will indicate his or her decision on the Memorandum for the File, sign it, and forward it with the requesting memorandum to the Director, who will send them to the assigned attorney. If the decision is favorable, the assigned attorney will send a copy of the Memorandum for the File and the statement of fees and expenses to OPBE, which will then obligate the funds and process the statement for payment. Finally, the assigned attorney will prepare a letter to the employee and the employing agency announcing the Department's decision and indicating, if appropriate, that the Department is now processing the bill for payment.

8. DOCUMENTATION.

Documents associated with the retention and payment of private counsel often reflect the substance of communications between employees and their Justice Department counsel. Accordingly, they are entitled to the protection of the attorney-client privilege (see 28 C.F.R. § 50.15[a][3]). This includes documents related to the authorization of private counsel and the payment of their bills.

The Civil Division will afford special handling to these documents in accordance with the instructions contained in the Assistant Attorney General's memorandum of July 26, 1983, titled "Maintenance of Attorney-Client Information." The Civil Division will treat these documents as a part of the official litigation case file for the particular matter, but will hold them in special file sections separate and apart from the remainder of the official case file. These special file sections will contain a cover sheet over the documents that proclaims: "This file contains privileged attorney-client information. Access is limited to assigned trial attorneys and their supervisors." A similar message must appear on the outside of the file section folder near the identifying DJ number. Civil Division employees will take great care to prevent the unauthorized disclosure of the information in these documents, generally treating them as "Limited Official Use" information (see Civil Division Directive CIV-2620).

When the case closes, the assigned attorney will promptly retire the remainder of the case file, but the Civil Division branch, office, or staff will retain the privileged file sections until the Department of Justice and the National Archives determine their ultimate disposition. A note will go into the official file indicating that the Division has retained a privileged portion of the file, and a copy of the signed closure form will go into the retained privileged file sections.

9. RATES PAID TO PRIVATE COUNSEL.

OPBE will review rates paid to private counsel at least every 3 years to ensure that rates are sufficiently competitive to attract qualified attorneys. Determinations to change rates will be based on market conditions and funding availability.

10. ADDITIONAL INFORMATION.

Additional information on this subject is available from the Director, OPBE (307-0034).

ROBERT D. MCCALLUM, JR.
Assistant Attorney General Civil Division.

EXHIBIT 1

MEMORANDUM FOR FILE

Re: Request(s) For Representation By Private Counsel Of [insert name of employee(s)] in [insert case caption]

The request(s) for representation by private counsel at Department of Justice expense in the above referenced matter is hereby granted, subject to the terms, conditions and limitation of 28 C.F.R. §§ 50.15, 50.16 and Civil Division Directive 2120A.

DATE: _____

Assistant Attorney General
(or designee)
CIVIL DIVISION

EXHIBIT 2

SAMPLE PRIVATE COUNSEL RETENTION LETTER

[Insert Name of attorney or firm]
[Insert address]

Re: [Insert case name]

Dear [Name]:

The Department of Justice has concluded that it reasonably appears at this time that representation of [insert employee's name] is in the interest of the United States. It also appears at this time, however, that representation of [insert employee's name] by attorneys employed by the Department of Justice is inappropriate. [Employee] has requested that the Department agree to reimburse you for [his or her] defense in the above referenced matter. Pursuant to 28 C.F.R. § 50.16(c)(1), your reimbursement will be subject to the applicable statutes, regulations, and the terms and conditions set forth in the enclosed addendum, which is incorporated into and made a part of this agreement.

You and [employee] should be aware that by entering into this agreement, the Department of Justice in no way assumes responsibility on the part of the United States Government for any monetary damages that may be imposed against [him or her] in connection with this matter. Although the Department of Justice has assumed responsibility for remunerating you in the course of representing [employee] to the extent specified in the addendum, your responsibility, of course, is solely to your client.

Should you have any questions concerning the terms of this agreement, including the enclosed addendum, please contact [Department attorney assigned to the case] at _____.

If you find the provisions of the agreement acceptable, please return the signed addendum to [name of assigned attorney] at the following address:

[Name of assigned attorney]
[Name of branch, office, or staff]
Civil Division
U.S. Department of Justice
Washington, D.C. 20530

Reimbursement of allowable fees and expenses will become effective on the Civil Division's receipt of the signed addendum.

Very truly yours,

Director
[Branch, office, or staff]
Civil Division

Enclosure

CONDITIONS OF PRIVATE COUNSEL RETENTION BY THE DEPARTMENT OF JUSTICE FOR REPRESENTATION OF CURRENT AND FORMER FEDERAL EMPLOYEES

The following items and conditions shall apply to the retention of a private attorney's legal services by the Department of Justice to represent current and former Federal employees in civil, congressional, or criminal proceedings.

1. NATURE OF RETENTION

Subject to the availability of funds, the Department of Justice agrees to pay an attorney, or other members of his or her firm, for those legal services reasonably necessitated by the defense of a current or former Federal employee (hereinafter "client") in civil, congressional, or criminal proceedings.

The Department will not honor bills for services that the Department determines were not directly related to the defense of issues presented by such matters. Examples of services for which the Department will not pay include, but are not limited to:

a. administrative claims, civil actions, or any indemnification proceedings against the United States on behalf of the client for any adverse monetary judgment, whether before or after the entry of such an adverse judgment;

b. cross claims against co-defendants or counterclaims against plaintiff, unless the Department of Justice determines in advance of its filing that a counterclaim is essential to the defense of the employee and the employee agrees that any recovery on the counterclaim will be paid to the United States as a reimbursement for the costs of the defense of the employee;

c. requests made under the Freedom of Information or Privacy Acts or civil suits against the United States under the Freedom of Information or Privacy Acts, or on any other basis, to secure documents for use in the defense of the client;

d. any legal work that advances only the individual interests of the employee; and

e. certain administrative expenses noted in paragraph number 4 below.

The retained attorney is free to undertake such actions as set forth above, but must negotiate any charges with the client and may not pass those charges on to the Department of Justice.

THE ABOVE LIST IS NOT EXHAUSTIVE. The Department of Justice will not reimburse services deemed reasonably necessary to the defense of an employee if they are not in the interests of the United States.

To avoid confusion over whether the retained attorney may bill the Department for a particular service under this retention agreement, the retained attorney should consult the Justice Department attorney assigned to the case, mentioned in the accompanying letter before undertaking the service.

2. BILLABLE HOURS

The Department of Justice agrees to pay the retained attorney for any amount of time not exceeding 120 billable hours per month for services performed in the defense of the client. The retained attorney may use the services of any number of attorneys, paralegals, or legal assistants in his or her firm so long as the aggregate number of billable hours in any given month does not exceed 120 hours. The client is free, however, to retain the attorney, or members of the firm, to perform work in excess of 120 hours per month so long as the firm does not bill the excess charge to the Department of Justice.

The Department will consider paying for services in excess of 120 hours in any given month if the press of litigation (e.g., trial preparation) clearly necessitates the expenditure of more time. The retained attorney must make requests for additional compensation to the Department in writing in advance of such expenditures.

3. LEGAL FEES

The Department agrees to pay the retained attorney up to \$200.00 per lawyer hour, plus expenses as described in paragraph 4 below. The charge for any services should not exceed the retained attorney's ordinary and customary charge for such services. This fee is based on the consideration that the retained attorney has been practicing law in excess of 5 years.

In the event the retained attorney uses the services of other lawyers in his or her firm, or the services of a paralegal or legal assistant, the Department agrees to pay the following fees.

a. Lawyer with more than 5 years practicing experience: \$200.00 per lawyer hour

b. Lawyer with 3–5 years of practicing experience: \$160.00 per lawyer hour

c. Lawyer with 0–3 years of practicing experience: \$133.00 per lawyer hour

d. Paralegal or legal assistant (or equivalent): \$78.00 per hour.

The Department of Justice periodically reviews the hourly rates paid to attorneys retained to defend Federal employees under 28 C.F.R. § 50.16. If, during the period of this agreement, the Department revises the schedule of hourly rates payable in such cases, the Department will pay revised rates for services rendered after the effective date of the revision in rates.

4. EXPENSES

While the Department will pay normal overhead expenses actually incurred (e.g., postage, telephone tolls, travel, transcripts), the retained attorney must itemize these charges. The Department will not accept for payment a bill that shows only a standard fee or percentage as "overhead". The retained attorney must describe, justify, and clear IN ADVANCE unusual or exceptionally high expenses.

In addition, the retained attorney must describe, justify, and clear in advance any consultations with or retention of experts or expert witnesses.

The retained attorney must secure advance approval to use computer-assisted research that involves charges in excess of \$500.00 in a given month.

The retained attorney must separately justify and obtain advance approval for services such as printing, graphic reproduction, or preparation of demonstrative evidence or explanatory exhibits.

The retained attorney must itemize and justify in-house copying costs exceeding \$150.00 in a given month. The Department will pay up to a per page copying cost of \$.15 per page.

The retained attorney must itemize and justify facsimile transmission costs exceeding \$150.00 in a given month.

The Department will pay expenses such as secretarial overtime or the purchase of books only in exceptional situations. The retained attorney must obtain advance approval for such expenditures.

Travel expenses may not include first class service or deluxe accommodations. The retained attorney may not bill time spent in travel unless it is used to accomplish tasks related to the litigation. The retained attorney must specifically identify such tasks.

The Department will not pay for meal charges not related to out-of-town travel. The Department will not provide compensation for client or other entertainment. The Department will not pay expenses for meals incidental to overtime.

The Department will not pay for expenses that can normally be absorbed as clerical overhead, such as time spent in preparing legal bills and filing papers with the Court. The retained attorney must separately list and justify messenger services.

The retained attorney must enumerate the expenses incurred for hiring local counsel by rate, hour, and kind of service. These hours must fall within the 120-hour monthly maximum. The hourly rates paid to local counsel may not exceed the rates listed in paragraph 3 above.

5. *FORMAT OF BILLS*

The retained attorney must submit bills on a monthly basis, stating the date of each service performed; the name of the attorney or legal assistant performing the service; a description of the service; and the time in tenths, sixths, or quarters of an hour, required to perform the service. Because of the limitation on reimbursable hours, a bill must include all services rendered in a given month. The Department will not consider subsequent bills for services rendered in a month for which it has already received a bill.

In describing the nature of the service performed, the itemization must reflect each litigation activity for which reimbursement is claimed.

The retained attorney must attach copies of airline tickets, hotel bills, and bills for deposition and hearing transcripts to the billing statement.

The retained attorney must itemize local mileage costs (e.g., purpose of travel and number of miles). The Department will pay the standard government cost per mile rate for the use of privately owned vehicles.

Before the Department of Justice will pay a bill, Department attorneys with substantive knowledge of the litigation will review it. If the retained attorney believes that the detail of the legal bill would compromise litigation tactics if disclosed to Department attorneys assigned to the case, the retained attorney should list those particular billing items on a separate sheet of paper with an indication of the specific concern. Department attorneys uninvolved with this case will independently review the separated, sensitive portion of the bill solely to determine if payment is appropriate under applicable standards. The individuals reviewing the bills will not discuss these items with the Department of Justice attorneys having responsibility for the case, nor will those responsible attorneys review the items in question.

After Department attorneys complete the review of a bill, the Department will notify the billing counsel if the Department deems any item or items nonreimbursable or if any item or items require further explanation. When further information or explanation is needed, the Department will hold the entire bill until the retained attorney responds. Only after the Department receives and reviews the response will the Department certify the bill in whole or in part for payment. For that reason, the retained attorney must respond promptly.

Should the Department determine that any items are not reimbursable under this agreement, the billing counsel may request further review of the Department's determination. The retained attorney shall make such a written request to the appropriate Branch director at the address indicated in the forwarding letter. The billing counsel must submit such requests for further review within 30 days, unless additional time is specifically requested and approved. Thereafter, the Department will not reconsider its determination.

6. *BILLING ADDRESS*

The retained attorney should submit all bills to:

Director, Office of Planning, Budget and Evaluation
 Civil Division
 United States Department of Justice
 Washington, D.C. 20530
 Attn: Room 9042, L Street Building

7. *PROMPT PAYMENT*

The Prompt Payment Act is applicable to payments under this agreement and requires the payment of interest on overdue payments. Determinations of interest due will be made in accordance with provisions of the Prompt Payment Act and Office of Management and Budget Circular A-125.

8. *GAO REVIEW*

Periodically, the Department of Justice may ask the retained attorney to submit copies of time sheets to the General Accounting Office (GAO) for purposes of auditing the accuracy of corresponding monthly bills, copies of which the Department will forward directly to GAO.

9. *TERMINATION*

The Department of Justice reserves the right to terminate its retention agreement with the retained attorney at any time for reasons set forth in 28 C.F.R. §50.16.

ACCEPTANCE

I agree that my retention by the Department of Justice to represent _____ in connection with _____ will be in accordance with the applicable statutes, regulations, and the foregoing terms and conditions. This written instrument, together with the applicable statutes and regulations, represents the entire agreement between the Department of Justice and the undersigned, any past or future oral agreements notwithstanding.

Signature: _____

Date: _____

Tax Identification Number: _____

EXHIBIT 3

MEMORANDUM

TO: Supervisor, Accounts Maintenance Staff
 Office of Planning, Budget, and Evaluation
 Civil Division

FROM: [Name of Director]
 [Name of Branch, Office, Staff] Civil Division

SUBJECT: Request to Establish Private Counsel Obligation

A decision was made to reimburse private counsel for representation of a Federal employee in connection with [insert case caption].

It is estimated that [insert dollar amount] is needed for reimbursement in fiscal year [insert year]. Please establish the following obligation at this time.

Law Firm

[Name of private counsel]
 (on behalf of [insert employee(s) name])
 [Address of private counsel firm]

FY XX

[insert dollar amount]

The firm's tax identification number is: [insert tax identification number]

If you have any questions, please contact [insert name] of my office at [insert telephone number].

Attachments

EXHIBIT 4

MEMORANDUM FOR FILE

Re: Request For Authorization To Reimburse [insert name of attorney] For The Representation of [insert name of employee] in [insert case caption]

[Insert name of employee(s)] has requested that the Department of Justice bear the cost of representation in this case. It appears that representation of [insert name of employee(s)] would have been in the interest of the United States and that failure to make a timely request for representation is not attributable to any fault on the part of [insert name of employee(s)]. Reimbursement of [insert attorney's name] in the amount of \$ _____ is hereby authorized.

DATE: _____

Deputy Assistant Attorney General
Civil Division

Question. Would you agree with Senator Grassley's characterization that "this is an unseemly high amount of money being spent by the taxpayers to defend what appears to be egregious misconduct?" If you disagree, please explain the reason for your disagreement.

Answer. We respectfully disagree for two reasons. First, only reasonable and necessary fees were reimbursed. The amount expended was for the legal services for six different prosecutors and for two separate but related matters:

- a contempt proceeding convened by the district judge; and
- a court-ordered several-years-long investigation, both stemming from a high-profile criminal prosecution which proceeded to trial.

The breadth of this undertaking is evidenced by the Special Prosecutor's investigative report, which exceeded 500 pages. Second, as noted in our previous response, employees are given a reasonable benefit of the doubt on disputed factual matters and representation is provided while the facts are being fully developed. This practice is designed to protect the Federal workforce and to ensure that the interests of the Government with respect to the legal issues in which the United States has a concern are adequately defended.

Question. On November 21, 2011, Judge Sullivan issued an order indicating that the report of his investigative counsel had been submitted and seeking the views of certain stakeholders, including the prosecutors, on whether the report should be made public. Did DOJ pay the legal expenses or associated costs of any of the prosecutors with respect to the issues raised in Judge Sullivan's November 21, 2011 order and if so, what public interest justified the expenditure of these funds and how much money was paid?

Answer. Judge Sullivan's November 21, 2011, order asked DOJ, Senator Stevens' attorneys, and the attorneys for the individual prosecutors to submit comments and state their positions on its release. The proceedings were conducted under seal and the Civil Division did not have access to any of the sealed submissions. While DOJ's position was unsealed on January 9, 2012, the positions of the individuals were not revealed until March 15, 2012, when the Special Prosecutor's report was released and Judge Sullivan's February 8, 2012, order was made public.

Pursuant to DOJ's previous determination that representation in connection with the investigation by Special Counsel Henry F. Schuelke III was in the Government's interest, and prior to the unsealing of the prosecutors' submissions on March 15, 2012, DOJ paid certain invoices for work that was conducted in connection with the prosecutors' court-invited comments on Special Counsel Schuelke's report.

Invoices were submitted by attorneys for Brenda Morris on December 15, 2011, January 24, 2012, and February 16, 2012, and payment was approved on January 6, 2012, February 10, 2012, and March 2, 2012, respectively.

Invoices were submitted by attorneys for James Goeke, on December 23, 2011, and January 31, 2012, and payment was approved on January 6, 2012, and February 8, 2012, respectively.

Invoices were submitted by attorneys for Joseph Bottini on December 13, 2011, and January 18, 2012, and payment was approved on December 20, 2011, and February 3, 2012, respectively.

Invoices were submitted by attorneys for Edward Sullivan, on December 15, 2011, January 12, 2012 and February 14, 2012, and payment was approved on December 20, 2011, January 20, 2012 and February 24, 2012, respectively.

The foregoing payments total approximately \$106,000. The time billed was used to review and analyze the Special Prosecutor's 500-plus-page investigative report,

formulate the client's position, and file a response in accordance with the court's order.

In light of the Government's decision not to object to the release of the report, DOJ has not paid invoices that were received after the prosecutors' positions were unsealed on March 15, 2012, and that relate to efforts to prevent the release of the report. The Civil Division has received, but have not yet processed, an invoice submitted on February 29, 2012, from attorneys for James Goeke (who opposed release of the Special Counsel report). We also received, but have not yet processed, three invoices submitted on February 24, 2012, from attorneys for William Welch (who did not oppose release of the Special Counsel report).

Question. On February 8, 2012, Judge Sullivan issued an order requiring that the investigative report and certain related documents in the proceedings be released to the public on March 15, 2012. One of DOJ's prosecutors, an Edward Sullivan, filed a motion in the District Court to stay that order and when his request was denied filed an emergency appeal to the D.C. Circuit to stay the release of the report. Does DOJ intend to pay the attorneys fees incurred by Mr. Sullivan in requesting the stay or the attorneys fees and/or associated costs he incurs in connection with his appeal? If so, what public interest justifies the expenditure of these funds?

Answer. DOJ has received, but not yet processed an invoice related to Mr. Sullivan's request for a stay and his emergency appeal. This invoice will be reviewed and processed in accordance with the terms of our standard retention agreement. As noted in a previous response, that agreement, among other things, limits the services for which the private attorney will be compensated to those directly associated with the litigation. And our practice is to require counsel to seek authorization from the Civil Division to take an appeal from an adverse ruling stemming from the litigation in which we have authorized reimbursement. In this case, we have no record that counsel for Mr. Sullivan contacted the Civil Division for authorization to pursue an appeal. In addition, the retention agreement provides that DOJ will not reimburse services even if deemed reasonably necessary to the defense of the employee if it appears those services are not in the interest of the United States. In light of the Government's decision not to object to the release of the report, the Civil Division has not paid invoices that were received after the prosecutors' positions were unsealed on March 15, 2012, and that relate to efforts to prevent the release of the report.

Question. Does DOJ believe that the report of Judge Sullivan's investigative counsel and related documents should be released on March 15 as Judge Sullivan has ordered? Does DOJ intend to oppose Mr. Sullivan's appeal to the D.C. Circuit?

Answer. Per the January 6, 2012, submission by DOJ (unsealed on January 9, 2012), the Department did not object to the March 15, 2012, release of the Special Prosecutor's report. DOJ has not entered an appearance in connection with Mr. Sullivan's emergency appeal, but was listed by private counsel as an interested party on the docket.

Question. If DOJ supports Mr. Sullivan's efforts to prevent public disclosure of the report and associated documents please state the public interest served by the Department's position?

Answer. See previous response. DOJ did not support Mr. Sullivan's efforts to prevent public disclosure of the report and its associated documents. As I previously stated at the March 8, 2012 Senate appropriations hearing, DOJ does not object to the release of the Special Counsel's investigative report.

Question. In his November 21, 2011 order Judge Emmet Sullivan' indicates that his investigative counsel has found that members of the *Stevens* prosecution team engaged in "significant, widespread and at times intentional—misconduct." In light of this finding and other findings in the investigative report does the Government have any recourse to recover attorney's fees and costs expended in the defense of its prosecutors' conduct? If so does the Government intend to exercise its rights?

Answer. Pursuant to long-standing policy, a Federal employee who has been provided representation either by DOJ or by private counsel is afforded the benefit of the doubt and his or her plausible version of the facts usually will be credited until a contrary factual determination is made by the employee's agency, a DOJ prosecuting component, or the appropriate professional responsibility office. Representation continues to be provided until DOJ decides to seek an indictment against the employee related to the conduct concerning which representation was undertaken or the Department determines that continued representation of the employee through private counsel is no longer in the interest of the United States (28 C.F.R. 50.16 (c)(2)(i) and (iv)).

These rules apply whether the representation is provided by DOJ attorneys directly or through the Department's private counsel program. Just as there is no provision to recover services already rendered by DOJ attorneys directly pursuant to

an earlier decision to provide such representation, there is no provision under the guidelines for recovering fees already expended.

PROSECUTORIAL MISCONDUCT

Question. “USA Today has reported that its 2010 investigation found that the department’s internal investigations frequently take a long time and that prosecutors faced little risk of losing their jobs even when officials documented serious misconduct. Court records show that most of the attorneys named in the *Stevens* case continue to be assigned to their official duties.” Is the USA Today writer’s observation that prosecutors face little risk of losing their jobs even in the face of documented serious misconduct accurate? Please explain.

Answer. We are aware of the 2010 USA Today investigation. In January 2011 we created the Professional Misconduct Review Unit (PMRU) to handle disciplinary actions for career attorneys at DOJ that arise from Office of Professional Responsibility (OPR) investigations. The PMRU is now responsible for reviewing all OPR findings of professional misconduct against Assistant U.S. Attorneys (AUSAs) and Criminal Division Attorneys. The PMRU also is responsible for imposing discipline in those matters in which it upholds OPR’s misconduct findings. We created the PMRU following a comprehensive review of existing disciplinary procedures and processes with the aim of creating a more efficient and uniform system to provide consistent, fair, and timely resolution of these cases. We believe that the PMRU is fulfilling its mandate.

DOJ is also forthcoming with information concerning OPR’s performance. OPR provides the Attorney General with an annual report of its activities. These reports include statistical information on OPR’s activities, significant policy changes and developments, and summaries of cases completed during the fiscal year. The reports are available to the public at <http://www.justice.gov/opr/reports.htm>. When making a finding of misconduct, OPR shares a draft report of its investigation with the subjects of the investigation prior to completing a final report. OPR’s misconduct findings then are subject to review by the PMRU (for AUSAs and Criminal Division prosecutors) and the Office of the Deputy Attorney General prior to the implementation of discipline. Provided that OPR’s findings of misconduct are upheld, discipline may range from a reprimand to removal from Federal service.

Question. Has the OPR been tasked to investigation allegations of misconduct by members of the *Stevens* prosecution team? How long has this investigation been going on and when might the public expect that it be concluded? Once OPR’s investigation is completed, who is responsible for implementing its findings? Will the findings be made public?

Answer. OPR conducted a 2½ year investigation of the *Stevens* misconduct allegations. While OPR completed its 672-page investigative report on August 15, 2011, the entire disciplinary process involves various steps, and the process is not finished until all the necessary steps have been completed. OPR’s misconduct findings are subject to review by the PMRU and the Office of the Deputy Attorney General prior to the implementation of discipline. No formal action is taken against a Department employee until the disciplinary process is final. Because DOJ’s disciplinary process is not yet complete, and because of limitations on public disclosure contained in the Privacy Act, the Department is unable to release the OPR Report at this time. Such a release also would be contrary to the integrity of the Department’s ongoing disciplinary process. As the Attorney General has stated previously, the Department plans to release publicly as much of the OPR report and the Department’s findings as possible, at the appropriate time and consistent with law. This cannot happen until the disciplinary process is complete.

Question. What potential consequences could members of the prosecution team found culpable of misconduct in the *Stevens* matter face?

Answer. While we cannot discuss at this time OPR’s specific findings in the *Stevens* case, when OPR’s findings of misconduct are upheld by the PMRU (for AUSAs and Criminal Division attorneys) and the Office of the Deputy Attorney General, discipline may range from a reprimand to removal from Federal service. However, any suspension in excess of 14 days is appealable to the Merit Systems Protection Board. All disciplinary determinations must fully consider the 14 factors enunciated in *Douglas v. Veterans Admin.*, 5 MSPR 313 (1981) that can mitigate or aggravate the level of discipline taken against an employee.

Question. In his November 21, 2011 order, Judge Sullivan observes that his investigative counsel found misconduct on the part of members of the *Stevens* prosecution team—misconduct that was characterized as “at times willful and intentional.” DOJ has had access to the report of Judge Sullivan’s investigators since last November. Yet USA Today states that court records show that most of the attorneys named

in the *Stevens* case continue to be assigned to criminal cases. As of March 8, 2012, does DOJ know who was responsible for the willful and intentional misconduct referred to in Judge Sullivan's November order and has it nevertheless permitted that individual or those individuals to continue to work on criminal cases? Has DOJ acted on the findings of Judge Sullivan's investigative counsel? If not, please explain why not.

Answer. In November 2011, Judge Sullivan released the report of his investigative counsel, Henry F. Schuelke, III, to certain DOJ individuals under a protective order for the purpose of assessing whether privacy and/or privilege issues affected the public release of the report. The designated individuals reviewed the document and responded accordingly that DOJ did not object to the release of the report. The report recently was publicly released. We are aware that the report is critical of Department attorneys, and we are addressing the matter through our disciplinary process. OPR, which cooperated fully with Mr. Schuelke's investigation, has conducted an independent review and has produced a detailed report concerning the misconduct allegations. This report is similar to Mr. Schuelke's in that it addresses the same misconduct issues; however, the OPR report makes specific findings and recommendations regarding each subject's conduct. Once our internal disciplinary review procedures are complete, and the subjects have been afforded an opportunity to comment on OPR's report and any disciplinary proposals, we will impose appropriate discipline in accordance with the 14 factors enunciated in *Douglas v. Veterans Admin.*, 5 MSPR 313 (1981) that can mitigate or aggravate the level of discipline taken against an employee.

FEDERAL CRIMINAL DISCOVERY REFORM

Question. Could you briefly explain what the *Brady* rule states and whether it is in your judgment it is necessary to the guarantee of a fair trial?

Answer. The *Brady* rule requires the disclosure of exculpatory and impeachment evidence when such evidence is material to guilt or punishment. *Brady*, 373 U.S. 83, 87 (1963); *Giglio v. United States*, 405 U.S. 150, 154 (1972). The Supreme Court indeed held in *Brady* that Government disclosure of material exculpatory and impeachment evidence is part of the constitutional guarantee to a fair trial. 373 U.S. at 87; *Giglio*, 405 U.S. at 154. DOJ is committed to ensuring this constitutional guarantee is met in every Federal case.

Question. Some would suggest that it is awkward for prosecutors to provide the defense with information that might undermine their hard work to gain a conviction. I believe that you would agree with me that the responsibility of a prosecutor is not to secure a conviction but to secure justice. Would you explain what DOJ is doing, particularly in light of the lessons learned from the *Stevens* case to ensure that *Brady* obligations are met?

Answer. DOJ takes its discovery obligations very seriously. For that reason, after discovery violations were uncovered in the *Stevens* case, the Attorney General moved to set aside the guilty verdict against Senator Stevens and dismiss the indictment. Furthermore, the Attorney General took decisive and unprecedented action to improve the criminal discovery practices within the Department. The following steps, among others, have already been taken:

- The Office of the Deputy Attorney General issued memoranda to all Federal prosecutors providing overarching guidance on gathering and reviewing discoverable information and making timely disclosure to defendants; directing each U.S. Attorney's Office to develop additional, more specific discovery policies; and providing separate guidance on discovery of electronically stored information (ESI).
- DOJ developed a ground-breaking protocol concerning the discovery of electronically stored information in criminal cases in collaboration with representatives from the Federal public defenders and counsel appointed under the Criminal Justice Act.
- DOJ dramatically expanded its discovery training requirements for all Federal prosecutors and institutionalized those requirements through codification in the U.S. Attorneys' Manual. All Federal prosecutors are now required to undertake annual discovery training, so that roughly 6,000 Federal prosecutors across the country receive the required training annually on a wide variety of criminal discovery-related topics.
- DOJ holds "New Prosecutor Boot Camp" courses for newly hired Federal prosecutors, which includes training on *Brady*, *Giglio*, and ESI, among other topics.
- DOJ has trained thousands of Federal law enforcement agents and support staff in criminal disclosure policies and practices, and produced criminal discovery training materials for our victim witness coordinators.

DOJ distributed to all Federal prosecutors nationwide a Discovery Blue Book that comprehensively covers the law, policy and practice of prosecutors' disclosure obligations, and made it available on the desktop of every Federal prosecutor and paralegal.

Question. In spite of DOJ's efforts to educate its attorneys about Brady's requirements, many commentators have noted that *Brady* practices vary from office to office and even within offices. It has been suggested that the *Brady* obligation should be codified in the Federal Rules of Criminal Procedure. In fact, Judge Sullivan wrote to U.S. Court of Appeals Judge Richard Tallman, Chair of the Advisory Committee on the Federal Rules of Civil Procedure suggesting that this approach be taken. It has been reported that DOJ opposed these efforts in 2006 and again in 2009 and the Advisory Committee chose not to pursue the issue in light of this opposition. Is this accurate and can you explain why this is the case?

Answer. In 2006, DOJ opposed any effort to amend the Federal Rules of Criminal Procedure to codify or expand government disclosure obligations under *Brady*. In 2009, this administration was prepared to codify the *Brady* rule within the Federal Rules of Criminal Procedure. However, the administration opposed the expansion of criminal discovery under consideration, because we believed the expansion being considered by the Advisory Committee would have damaged the carefully constructed balance created by the courts for criminal discovery and would have ignored the need to protect the rights of victims, witnesses, law enforcement officers, and national security in criminal discovery practice.

Question. In light of DOJ's lack of support for improving Brady practices through the Federal Rules, the National Association of Criminal Defense Lawyers has proposed a model Brady reform bill. I am preparing this bill for introduction in the Senate. Is it reasonable to expect that DOJ would oppose this proposal?

Answer. We will oppose legislation that deviates from Supreme Court law, requires the disclosure of nonmaterial, legally irrelevant, and inadmissible information, or that does not properly account for and respect the interests of victims, witnesses, law enforcement officers, and national security.

Question. Would DOJ be supportive of the Judiciary Committees conducting a hearing on the Brady reform bill I intend to introduce and Brady practices overall in the near future?

Answer. We think any hearing on criminal discovery legislation should include witnesses who can speak to all the interests of justice, including the interests of defendants, victims, witnesses, law enforcement, and national security. A hearing on discovery legislation should also explore the practical realities of the legislation. We would have no objection to such a hearing.

BILL ALLEN MATTER

Question. Is there anything you would like to say, in addition to what you told the subcommittee last year, which would explain why DOJ declined the recommendations of career prosecutors and professional law enforcement in this matter?

Answer. The protection of children is of the highest priority for DOJ and we aggressively prosecute those who harm our Nation's children. As a result of DOJ's decision to expand Project Safe Childhood (PSC) in May 2011, the Department now coordinates closely with law enforcement at the Federal, tribal, State, and local levels to investigate and prosecute all Federal crimes involving the sexual exploitation of a minor, including those committed in Indian country and those that involve commercial sexual activity, whether or not they involve the Internet.

Moreover, DOJ's track record of vigorously prosecuting those who sexually abuse minors speaks for itself:

- In fiscal year 2011, DOJ obtained approximately 2,713 indictments, against 2,929 defendants, for offenses involving the sexual exploitation of a minor. This represents a 15-percent increase in the number of indictments more than fiscal year 2007 (in which 2,364 indictments were filed against 2,470 defendants). Since the beginning of fiscal year 2007, more than 11,447 defendants have been convicted in Federal courts of an offense related to the sexual exploitation of a minor. These crimes have ranged from production of obscene visual depictions of minors engaged in sexually explicit conduct; to receipt, distribution, possession, and/or production of child pornography; to the direct physical, sexual abuse of a minor.
- Since fiscal year 2001, the caseload of the attorneys in the Child Exploitation and Obscenity Section of the Criminal Division has increased every year, and it has increased cumulatively by more than 1,100 percent.

As the Attorney General has previously testified regarding the investigation of Bill Allen, any decision that we make to prosecute or not prosecute a case is governed by the Principles of Federal Prosecution, and we look at a host of relevant factors including the strength of evidence; the state of the law; the age of the case; the reliability of witnesses and other evidence; whether we can adequately address anticipated pretrial motions and discovery demands; and whether we believe any conviction can be defended on appeal, among many other factors. Very simply, we make all decisions to prosecute or not prosecute—including that relating to Bill Allen—based solely on the law and the facts and nothing else.

Question. At my request, OPR has undertaken a preliminary inquiry into this issue. Can you tell me the status of that inquiry and explain what steps are being taken to ensure that OPR arrives at an independent and objective conclusion on this politically sensitive issue?

Answer. OPR's preliminary inquiry is ongoing. While OPR reports to the Attorney General, it operates independently, and the Attorney General's office exerts no influence over OPR's investigations or the content of its reports.

Question. The Alaska Attorney General's Office and the Anchorage Police Department investigative team have asked to meet with OPR to discuss their case. I have asked OPR to send a team to Alaska to understand how the case against Mr. Allen was prepared. Is OPR team authorized to travel to Alaska to meet with those who did the hard work to build the sexual abuse case against Mr. Allen?

Answer. OPR has the authority to take whatever steps it deems necessary in order to complete an inquiry or investigation.

Senator MIKULSKI. Before I recess the subcommittee, I want to conclude the hearing the way I began. As I listened to the questions, the answers, we've looked at the budget in the short time that we have to review, I want to end the hearing the way I began, which is to thank the men and women who work at the Justice Department.

I've been on this subcommittee a long time. It's been a great blessing and a great honor. And when I think about it, the scope and complexity of what our citizens and our country face, and what our Justice Department faces, it's an amazing job, from community safety, to national safety—just in the last decade, the expansion in the national security portfolio, and the transformation of agencies. FBI is not, you know, J. Edgar Hoover's FBI any more.

So for everybody who works, everybody's out on the street, everybody tracking sexual predators, everybody who's doing their job, the prison guards, and all the wonderful support staff, the paralegals, the secretarial staff, the administrative staff, et cetera, we just want to say thank you.

I think our country's safer, because of your work. And we have to look out for our civil service, because we need an independent judiciary. We need a Justice Department that functions with absolute integrity. But we, who fund the appropriations, need to know that if you're going to have a crackerjack civil service, we have to also support that crackerjack civil service. So, thank you, and God bless you, and God bless America.

SUBCOMMITTEE RECESS

The subcommittee stands in recess until March 15, next Thursday, at 10 a.m. We will take the testimony of the Director of the FBI, in both an open hearing and then ultimately a classified hearing.

The subcommittee is in recess.

Attorney General HOLDER. Thank you, Madam Chair.

[Whereupon, at 11:37 a.m., Thursday, March 8, the subcommittee was recessed, to reconvene at 10 a.m., Thursday, March 15.]